

Special Education Rules & Regulations

Individuals with Disabilities Education Act
State Board of Education Rules
Commissioner's Rules
Texas State Laws



Special education services shall be provided to eligible students in accordance with all applicable federal law and regulations, state statutes, rules of the State Board of Education (SBOE) and commissioner of education, and the State Plan Under Part B of the Individuals with Disabilities Education Act (IDEA). 19 TAC § 89.1001(a) Last Amended: March 6, 2001, 26 TexReg 1837



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Source: Texas Education Agency - 19 Texas Administrative Code Part II

URL: <http://ritter.tea.state.tx.us/rules/tac/index.html>

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Source: Texas Secretary of State

URL:

[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=4&ti=22&pt=21&ch=465&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=22&pt=21&ch=465&rl=Y)

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<p align="center">Subpart A General Purposes, Applicability, and Regulations That Apply to This Program</p>	<p align="center">Texas Administrative Code</p>	<p align="center">Texas Education Code</p>
<p>§ 300.1 Purposes. The purposes of this part are—</p> <ul style="list-style-type: none"> (a) To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; (b) To ensure that the rights of children with disabilities and their parents are protected; (c) To assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities; and (d) To assess and ensure the effectiveness of efforts to educate children with disabilities. <p>(Authority: 20 U.S.C. 1400(d)) Last Amended: 71 FR 46755, Aug. 14, 2006</p> <p>§ 300.2 Applicability of this part to State and local agencies.</p> <ul style="list-style-type: none"> (a) <i>States.</i> This part applies to each State that receives payments under Part B of the Act, as defined in §300.4. (b) <i>Public agencies within the State.</i> The provisions of this part— <ul style="list-style-type: none"> (1) Apply to all political subdivisions of the State that are involved in the education of children with disabilities, including: <ul style="list-style-type: none"> (i) The State educational agency (SEA). (ii) Local educational agencies (LEAs), educational service agencies (ESAs), and public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA. (iii) Other State agencies and schools (such as Departments of Mental Health and Welfare and State schools for children with deafness or children with blindness). (iv) State and local juvenile and adult correctional facilities; and (2) Are binding on each public agency in the State that provides special education and related services to children with disabilities, regardless of whether that agency is receiving funds under Part B of the Act. (c) <i>Private schools and facilities.</i> Each public agency in the State is responsible for ensuring that the rights and protections under Part B of the Act are given to children with disabilities— <ul style="list-style-type: none"> (1) Referred to or placed in private schools and facilities by that public agency; or (2) Placed in private schools by their parents under the provisions of §300.148. 	<p>§ 89.1001. Scope and Applicability. [Excerpt]</p> <ul style="list-style-type: none"> (a) Special education services shall be provided to eligible students in accordance with all applicable federal law and regulations, state statutes, rules of the State Board of Education (SBOE) and commissioner of education, and the State Plan Under Part B of the Individuals with Disabilities Education Act (IDEA). (b) Education programs, under the direction and control of the Texas Youth Commission, Texas School for the Blind and Visually Impaired, Texas School for the Deaf, and schools within the Texas Department of Criminal Justice shall comply with state and federal law and regulations concerning the delivery of special education and related services to eligible students and shall be monitored by the Texas Education Agency in accordance with the requirements identified in subsection (a) of this section. <p>...</p> <p>Last Amended: March 6, 2001, 26 TexReg 1837</p> <p>§ 89.1100. Memorandum of Understanding on Coordination of Services to Disabled Persons. Clarification of financial and service responsibilities of the Texas Department of Human Services, the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, the Texas Rehabilitation Commission, the Texas Commission for the Blind, the Texas Commission for the Deaf, Texas Department of Protective and Regulatory Services, Texas Interagency Council on Early Childhood Intervention, and the Texas Education Agency related to disabled persons are contained in the Memorandum of Understanding on Coordination of Services to Disabled Persons, which is adopted by reference as a rule of the Texas Education Agency. The complete text of the memorandum of understanding</p>	

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(Authority: 20 U.S.C. 1412)
Last Amended: 71 FR 46755, Aug. 14, 2006

Definitions Used in This Part

§ 300.4 Act.

Act means the Individuals with Disabilities Education Act, as amended.

(Authority: 20 U.S.C. 1400(a))
Last Amended: 71 FR 46755, Aug. 14, 2006

§ 300.5 Assistive technology device.

Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

(Authority: 20 U.S.C. 1401(1))
Last Amended: 71 FR 46756, Aug. 14, 2006

§ 300.6 Assistive technology service.

Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes—

- (a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
- (b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
- (c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
- (d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

may be found in the rules of the Texas Department of Human Services, 40 Texas Administrative Code (TAC) Chapter 72. A copy of the memorandum of understanding is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

Last Amended: September 1, 1996, 21 TexReg 7240

§ 30.0015. Transfer of Assistive Technology Devices. [Excerpt]

(a) In this section:

- (1) "Assistive technology device" means any device, including equipment or a product system, that is used to increase, maintain, or improve functional capabilities of a student with a disability.
- (2) "Student with a disability" means a student who is eligible to participate in a school district's special education program under Section 29.003.
- (3) "Transfer" means the process by which a school district that has purchased an assistive technology device may sell, lease, or loan the device for the continuing use of a student with a disability changing the school of attendance in the district or leaving the district.

...
Last Amended: 76th Leg., Ch. 682, Sec. 1, eff. June 18, 1999

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(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

(Authority: 20 U.S.C. 1401(2))

Last Amended: 71 FR 46756, Aug. 14, 2006

§ 300.7 Charter school.

Charter school has the meaning given the term in section 4310(2) of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 et seq. (ESEA).

(Authority: 20 U.S.C. 7221i(2))

Last Amended: 82 FR 29759, June 30, 2017

§ 300.8 Child with a disability.

(a) General.

(1) *Child with a disability* means a child evaluated in accordance with §§300.304 through 300.311 as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as “emotional disturbance”), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

(2)

(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.

(ii) If, consistent with §300.39(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

(b) *Children aged three through nine experiencing developmental delays.* *Child with a disability* for children aged three through nine (or any subset of that age range, including ages three through five), may, subject to the conditions described in §300.111(b), include a child—

(1) Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Physical development, cognitive

§ 89.1040. Eligibility Criteria. [Excerpt]

(a) Special education services. To be eligible to receive special education services, a student must be a "child with a disability," as defined in 34 Code of Federal Regulations (CFR), §300.8(a), subject to the provisions of 34 CFR, §300.8(c), the Texas Education Code, §29.003, and this section. The provisions in this section specify criteria to be used in determining whether a student's condition meets one or more of the definitions in federal regulations or in state law.

...

(c) Eligibility definitions.

(1) Autism. A student with autism is one who has been determined to meet the criteria for autism as stated in 34 CFR, §300.8(c)(1). Students with pervasive developmental disorders are included under this category. The team's written report of evaluation must include specific recommendations for behavioral interventions and strategies.

(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 subsections (c)(3) and (c)(12) of this section:

(A) meets the eligibility criteria for auditory impairment specified in subsection (c)(3) of this section and visual impairment specified in subsection (c)(12) of this section;

(B) meets the eligibility criteria for a student with a visual impairment and has a suspected hearing loss that cannot be demonstrated conclusively, but a speech/language therapist, a certified speech and language therapist, or a licensed speech language pathologist indicates there is no speech at an age when speech would normally be expected;

(C) has documented hearing and visual losses that, if considered individually, may not meet the

§ 29.003. Eligibility Criteria.

(a) The agency shall develop specific eligibility criteria based on the general classifications established by this section with reference to contemporary diagnostic or evaluative terminologies and techniques. Eligible students with disabilities shall enjoy the right to a free appropriate public education, which may include instruction in the regular classroom, instruction through special teaching, or instruction through contracts approved under this subchapter. Instruction shall be supplemented by the provision of related services when appropriate.

(b) A student is eligible to participate in a school district's special education program if the student:

(1) is not more than 21 years of age and has a visual or auditory impairment that prevents the student from being adequately or safely educated in public school without the provision of special services; or

(2) is at least three but not more than 21 years of age and has one or more of the following disabilities that prevents the student from being adequately or safely educated in public school without the provision of special services:

- (A) physical disability;
- (B) mental retardation;
- (C) emotional disturbance;
- (D) learning disability;
- (E) autism;
- (F) speech disability; or
- (G) traumatic brain injury.

Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995

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<p>development, communication development, social or emotional development, or adaptive development; and</p> <p>(2) Who, by reason thereof, needs special education and related services.</p> <p>(c) <i>Definitions of disability</i> terms. The terms used in this definition of a child with a disability are defined as follows:</p> <p>(1)</p> <p>(i) <i>Autism</i> means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.</p> <p>(ii) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section.</p> <p>(iii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.</p> <p>(2) <i>Deaf-blindness</i> means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.</p> <p>(3) <i>Deafness</i> means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.</p> <p>(4)</p> <p>(i) <i>Emotional disturbance</i> means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:</p> <p>(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.</p> <p>(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.</p> <p>(C) Inappropriate types of behavior or feelings under normal circumstances.</p> <p>(D) A general pervasive mood of unhappiness or depression.</p> <p>(E) A tendency to develop physical symptoms or fears associated with personal or school problems.</p>	<p>requirements for auditory impairment or visual impairment, but the combination of such losses adversely affects the student's educational performance; or</p> <p>(D) has a documented medical diagnosis of a progressive medical condition that will result in concomitant hearing and visual losses that, without special education intervention, will adversely affect the student's educational performance.</p> <p>(3) <i>Auditory impairment</i>. A student 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 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 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.</p> <p>(4) <i>Emotional disturbance</i>. A student with an emotional disturbance is one who has been determined to meet the criteria for emotional disturbance as stated in 34 CFR, §300.8(c)(4). The written report of evaluation must include specific recommendations for behavioral supports and interventions.</p> <p>(5) <i>Intellectual disability</i>. A student with an intellectual disability is one who has been determined to meet the criteria for an intellectual disability as stated in 34 CFR, §300.8(c)(6). In meeting the criteria stated in 34 CFR, §300.8(c)(6), a student with an intellectual disability is one who:</p> <p>(A) has been determined to have significantly sub-average intellectual functioning as measured by a standardized, individually administered test of cognitive ability in which the overall test score is at least two standard deviations below the mean, when taking into consideration the standard error of measurement of the test; and</p> <p>(B) concurrently exhibits deficits in at least two of the following areas of adaptive behavior: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety.</p> <p>(6) <i>Multiple disabilities</i>.</p> <p>(A) A student with multiple disabilities is one who has been determined to meet the criteria for multiple disabilities as stated in 34 CFR, §300.8(c)(7). In meeting the criteria stated in 34 CFR, §300.8(c)(7), a student with multiple disabilities is one who has a</p>	
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<p>(ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.</p> <p>(5) Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.</p> <p>(6) Intellectual disability means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance. The term "intellectual disability" was formerly termed "mental retardation."</p> <p>(7) Multiple disabilities means concomitant impairments (such as intellectual disability-blindness or intellectual disability-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.</p> <p>(8) Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).</p> <p>(9) Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—</p> <p>(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and</p> <p>(ii) Adversely affects a child's educational performance.</p> <p>(10) Specific learning disability—</p> <p>(i) General. 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 to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.</p> <p>(ii) Disorders not included. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional</p>	<p>combination of disabilities defined in this section and who meets all of the following conditions:</p> <p>(i) the student's disability is expected to continue indefinitely; and</p> <p>(ii) the disabilities severely impair performance in two or more of the following areas:</p> <p>(I) psychomotor skills;</p> <p>(II) self-care skills;</p> <p>(III) communication;</p> <p>(IV) social and emotional development; or</p> <p>(V) cognition.</p> <p>(B) Students who have more than one of the disabilities defined in this section but who do not meet the criteria in subparagraph (A) of this paragraph must not be classified or reported as having multiple disabilities.</p> <p>(7) Orthopedic impairment. A student with an orthopedic impairment is one who has been determined to meet the criteria for orthopedic impairment as stated in 34 CFR, §300.8(c)(8). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on an orthopedic impairment must include a licensed physician.</p> <p>(8) Other health impairment. A student with other health impairment is one who has been determined to meet the criteria for other health impairment due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette's Disorder as stated in 34 CFR, §300.8(c)(9). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on other health impairment must include a licensed physician.</p> <p>(9) Learning disability.</p> <p>(A) 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 in 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:</p> <p>(i) data that demonstrates the student was provided appropriate instruction in reading (as described in 20 United States Code (USC), §6368(3)), and/or mathematics within general education settings delivered by qualified personnel; and</p> <p>(ii) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal evaluation of student progress during instruction. Data-</p>	
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<p>disturbance, or of environmental, cultural, or economic disadvantage.</p> <p>(11) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.</p> <p>(12) Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.</p> <p>(13) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.</p> <p>Last Amended: 82 FR 31912, July 11, 2017</p>	<p>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.</p> <p>(B) A student with a learning disability is one who:</p> <ul style="list-style-type: none"> (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; 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 scientific, research-based intervention; and (l) does not make sufficient progress when provided a process based on the student's response to scientific, research-based intervention (as defined in 20 USC, §7801(37)), 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 (ll) 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. <p>(10) Speech impairment. A student with a speech impairment is one who has been determined to meet the criteria for speech or language impairment as stated in 34 CFR, §300.8(c)(11). The multidisciplinary team that collects or reviews evaluation data in connection with the</p>	
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	<p>determination of a student's eligibility based on a speech impairment must include a certified speech and hearing therapist, a certified speech and language therapist, or a licensed speech/language pathologist.</p> <p>(11) Traumatic brain injury. A student with a traumatic brain injury is one who has been determined to meet the criteria for traumatic brain injury as stated in 34 CFR, §300.8(c)(12). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on a traumatic brain injury must include a licensed physician, in addition to the licensed or certified practitioners specified in subsection (b)(1) of this section.</p> <p>(12) Visual impairment.</p> <p>(A) A student with a visual impairment is one who has been determined to meet the criteria for visual impairment as stated in 34 CFR, §300.8(c)(13). The visual loss should be stated in exact measures of visual field and corrected visual acuity at a distance and at close range in each eye in a report by a licensed ophthalmologist or optometrist. The report should also include prognosis whenever possible. If exact measures cannot be obtained, the eye specialist must so state and provide best estimates. In meeting the criteria stated in 34 CFR, §300.8(c)(13), a student with a visual impairment is one who:</p> <ul style="list-style-type: none"> (i) has been determined by a licensed ophthalmologist or optometrist: <ul style="list-style-type: none"> (I) to have no vision or to have a serious visual loss after correction; or (II) to have a progressive medical condition that will result in no vision or a serious visual loss after correction; and. (ii) has been determined by the following evaluations to have a need for special services: <ul style="list-style-type: none"> (I) a functional vision evaluation by a certified teacher of students with visual impairments or a certified orientation and mobility specialist. The evaluation must include the performance of tasks in a variety of environments requiring the use of both near and distance vision and recommendations concerning the need for a clinical low vision evaluation; and (II) a learning media assessment by a certified teacher of students with visual impairments. The learning media assessment must include recommendations concerning which specific visual, tactual, and/or auditory learning media are appropriate for the student and whether or not there is a need for ongoing evaluation in this area. 	
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<p>§ 300.9 Consent. <i>Consent</i> means that—</p> <p>(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or through another mode of communication;</p> <p>(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and</p> <p>(c) (1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.</p> <p>(2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has</p>	<p>(B) A student with a visual impairment is functionally blind if, based on the preceding evaluations, the student will use tactual media (which includes braille) as a primary tool for learning to be able to communicate in both reading and writing at the same level of proficiency as other students of comparable ability.</p> <p>(C) Beginning with the 2014-2015 school year, a full individual and initial evaluation of a student suspected of having a visual impairment must include an orientation and mobility evaluation conducted by a person who is appropriately certified as an orientation and mobility specialist and must be conducted in a variety of lighting conditions and in a variety of settings, including in the student's home, school, and community and in settings unfamiliar to the student.</p> <p>(D) Beginning with the 2014-2015 school year, a person who is appropriately certified as an orientation and mobility specialist must participate, as part of a multidisciplinary team, in evaluating data used in making the determination of the student's eligibility as a student with a visual impairment.</p> <p>(E) Beginning with the 2014-2015 school year, the scope of any reevaluation of a student who has been determined, after the full individual and initial evaluation, to be eligible for the district's special education program on the basis of a visual impairment must be determined, in accordance with 34 CFR, §§300.122 and 300.303-300.311, by a multidisciplinary team that includes an appropriately certified orientation and mobility specialist.</p> <p>(13) Noncategorical. A student between the ages of 3-5 who is evaluated as having an intellectual disability, an emotional disturbance, a specific learning disability, or autism may be described as noncategorical early childhood.</p> <p>Last Amended: December 2, 2015, 40 TexReg 8642</p>	
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<p>occurred after the consent was given and before the consent was revoked).</p> <p>(3) If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.</p> <p>(Authority: 20 U.S.C. 1414(a)(1)(D)) Last Amended: 73 FR 73027, Dec. 1, 2008</p> <p>§ 300.10 [Reserved]</p> <p>§ 300.11 Day; business day; school day.</p> <p>(a) <i>Day</i> means calendar day unless otherwise indicated as business day or school day.</p> <p>(b) <i>Business day</i> means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in §300.148(d)(1)(ii)).</p> <p>(c) (1) <i>School day</i> means any day, including a partial day that children are in attendance at school for instructional purposes.</p> <p>(2) <i>School day</i> has the same meaning for all children in school, including children with and without disabilities.</p> <p>(Authority: 20 U.S.C. 1221e-3) Last Amended: 71 FR 46774, Aug. 14, 2006</p> <p>§ 300.12 Educational service agency. <i>Educational service agency</i> means—</p> <p>(a) A regional public multiservice agency—</p> <p>(1) Authorized by State law to develop, manage, and provide services or programs to LEAs;</p> <p>(2) Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State;</p> <p>(b) Includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school; and</p> <p>(c) Includes entities that meet the definition of intermediate educational unit in section 602(23) of the Act as in effect prior to June 4, 1997.</p> <p>(Authority: 20 U.S.C. 1401(5)) Last Amended: 71 FR 46757, Aug. 14, 2006</p>	<p>§ 89.1141. Education Service Center Regional Special Education Leadership. [Excerpt]</p> <p>...</p> <p>(g) For the purposes of this subchapter, ESCs shall be considered to be educational service agencies as defined in federal regulations.</p> <p>Last Amended: November 11, 2007, 32 TexReg 8129</p>	
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§ 300.13 Elementary school.

Elementary school means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

(Authority: 20 U.S.C. 1401(6))

Last Amended: 71 FR 46757, Aug. 14, 2006

§ 300.14 Equipment.

Equipment means—

- (a) Machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and
- (b) All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

(Authority: 20 U.S.C. 1401(7))

Last Amended: 71 FR 46757, Aug. 14, 2006

§ 300.15 Evaluation.

Evaluation means procedures used in accordance with §§300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

(Authority: 20 U.S.C. 1414(a) (c))

Last Amended: 71 FR 46757, Aug. 14, 2006

§ 300.16 Excess costs.

Excess costs means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting—

- (a) Amounts received—
 - (1) Under Part B of the Act;
 - (2) Under Part A of title I of the ESEA; and
 - (3) Under Part A of title III of the ESEA and;
- (b) Any State or local funds expended for programs that would qualify for assistance under any of the parts described in paragraph (a) of this section, but excluding any amounts for capital outlay or debt service.

(Authority: 20 U.S.C. 1401(8))

Last Amended: 82 FR 29759, June 30, 2017

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§ 300.17 Free appropriate public education.

Free appropriate public education or FAPE means special education and related services that—

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the SEA, including the requirements of this part;
- (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.320 through 300.324.

(Authority: 20 U.S.C. 1401(9))

Last Amended: 71 FR 46758, Aug. 14, 2006

§ 300.18 [Reserved]

§ 300.19 Homeless children.

Homeless children has the meaning given the term *homeless children and youths* in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 *et seq.*

(Authority: 20 U.S.C. 1401(11))

Last Amended: 71 FR 46759, Aug. 14, 2006

§ 300.20 Include.

Include means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

(Authority: 20 U.S.C. 1221e-3)

Last Amended: 71 FR 46759, Aug. 14, 2006

§ 300.21 Indian and Indian tribe.

- (a) *Indian* means an individual who is a member of an Indian tribe.
- (b) *Indian tribe* means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.*).
- (c) Nothing in this definition is intended to indicate that the Secretary of the Interior is required to provide services or funding to a State Indian tribe that is not listed in the FEDERAL REGISTER list of Indian entities recognized as eligible to receive services from the United States, published pursuant to Section 104 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a-1.

(Authority: 20 U.S.C. 1401(12) and (13))

Last Amended: 71 FR 46759, Aug. 14, 2006

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§ 300.22 Individualized education program.

Individualized education program or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with §§300.320 through 300.324.

(Authority: 20 U.S.C. 1401(14))

Last Amended: 71 FR 46759, Aug. 14, 2006

§ 29.005. Individualized Education Program.

- (a) Before a child is enrolled in a special education program of a school district, the district shall establish a committee composed of the persons required under 20 U.S.C. Section 1414(d) to develop the child's individualized education program. If a committee is required to include a regular education teacher, the regular education teacher included must, to the extent practicable, be a teacher who is responsible for implementing a portion of the child's individualized education program
- (b) The committee shall develop the individualized education program by agreement of the committee members or, if those persons cannot agree, by an alternate method provided by the agency. Majority vote may not be used to determine the individualized education program.
- (b-1) The written statement of the individualized education program must document the decisions of the committee with respect to issues discussed at each committee meeting. The written statement must 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 administrator agreed or disagreed with the decisions of the committee.
- (c) If the individualized education program is not developed by agreement, the written statement of the program required under 20 U.S.C. Section 1414(d) must include the basis of the disagreement. Each member of the committee who disagrees with the individualized education program developed by the committee is entitled to include a statement of disagreement in the written statement of the program.
- (d) If the child's parent is unable to speak English, the district shall:
 - (1) provide the parent with a written or audiotaped copy of the child's individualized education program translated into Spanish if Spanish is the parent's native language; or
 - (2) if the parent's native language is a language other than Spanish, make a good faith effort to provide the parent with a written or audiotaped copy of the child's individualized education program translated into the parent's native language.
- (e) The commissioner by rule may require a school district to include in the individualized education program of a student with autism or another pervasive developmental disorder any information or requirement determined necessary to ensure the student receives a free appropriate public education as required under the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.).
- (f) The written statement of a student's individualized education program may be required to include only information included in the model form developed under Section 29.0051(a).
- (g) The committee may determine that a behavior improvement plan or a behavioral intervention plan is appropriate for a

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<p>§ 300.23 Individualized education program team. <i>Individualized education program team or IEP Team</i> means a group of individuals described in §300.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability. (Authority: 20 U.S.C. 1414(d)(1)(B)) Last Amended: 71 FR 46759, Aug. 14, 2006</p>	<p>§ 89.1050. The Admission, Review, and Dismissal (ARD) Committee. [Excerpt] (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 school district is responsible for all of the functions for which the IEP team is responsible under federal 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</p>	<p>student for whom the committee has developed an individualized education program. If the committee makes that determination, the behavior improvement plan or the behavioral intervention plan shall be included as part of the student's individualized education program and provided to each teacher with responsibility for educating the student. Last Amended: 84th Leg., R.S., Ch. 1192 (S.B. 1259), Sec. 2, eff. June 19, 2015</p> <p>§ 29.0051. Model Form. (a) The agency shall develop a model form for use in developing an individualized education program under Section 29.005(b). The form must be clear, concise, well organized, and understandable to parents and educators and may include only: (1) the information included in the model form developed under 20 U.S.C. Section 1417(e)(1); (2) a state-imposed requirement relevant to an individualized education program not required under federal law; and (3) the requirements identified under 20 U.S.C. Section 1407(a)(2). (b) The agency shall post on the agency's Internet website the form developed under Subsection (a). (c) A school district may use the form developed under Subsection (a) to comply with the requirements for an individualized education program under 20 U.S.C. Section 1414(d). Last Amended: 82nd Leg., R.S., Ch. 1250 (S.B. 1788), Sec. 2, eff. June 17, 2011</p>
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<p>§ 300.24 Individualized family service plan. <i>Individualized family service plan or IFSP</i> has the meaning given the term in section 636 of the Act. (Authority: 20 U.S.C. 1401(15)) Last Amended: 71 FR 46759, Aug. 14, 2006</p> <p>§ 300.25 Infant or toddler with a disability. <i>Infant or toddler with a disability</i>—</p> <p>(a) Means an individual under three years of age who needs early intervention services because the individual—</p> <p>(1) Is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in</p>	<p>have been designated to receive special education and related services);</p> <p>(4) 34 CFR, §300.530 and §300.531, and TEC, §37.004 (disciplinary placement of students with disabilities);</p> <p>(5) 34 CFR, §§300.302-300.306 (relating to evaluations, re-evaluations, and determination of eligibility);</p> <p>(6) 34 CFR, §§300.114-300.117 (relating to least restrictive environment);</p> <p>(7) TEC, §28.006 (Reading Diagnosis);</p> <p>(8) TEC, §28.0211 (Satisfactory Performance on Assessment Instruments Required; Accelerated Instruction);</p> <p>(9) TEC, §28.0212 (Junior High or Middle School Personal Graduation Plan);</p> <p>(10) TEC, §28.0213 (Intensive Program of Instruction);</p> <p>(11) TEC, Chapter 29, Subchapter I (Programs for Students Who Are Deaf or Hard of Hearing);</p> <p>(12) TEC, §30.002 (Education for Children with Visual Impairments);</p> <p>(13) TEC, §30.003 (Support of Students Enrolled in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf);</p> <p>(14) TEC, §33.081 (Extracurricular Activities);</p> <p>(15) TEC, Chapter 39, Subchapter B (Assessment of Academic Skills); and</p> <p>(16) TEC, §42.151 (Special Education).</p> <p>(b) For a student from birth through two years of age with visual 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 Department of Assistive and Rehabilitative Services. For students three years of age and older, school districts must develop an IEP.</p> <p>...</p> <p>Last Amended: March 22, 2017, 42 TexReg 1247</p>	
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one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or

(2) Has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and

(b) May also include, at a State's discretion—

(1) At-risk infants and toddlers; and

(2) Children with disabilities who are eligible for services under section 619 and who previously received services under Part C of the Act until such children enter, or are eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under Part C of the Act serving such children shall include—

(i) An educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills; and

(ii) A written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under Part C of the Act or participate in preschool programs under section 619.

(Authority: 20 U.S.C. 1401(16) and 1432(5))
Last Amended: 71 FR 46759, Aug. 14, 2006

§ 300.26 Institution of higher education.
Institution of higher education—

(a) Has the meaning given the term in section 101 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1021 *et seq.* (HEA); and

(b) Also includes any community college receiving funds from the Secretary of the Interior under the Tribally Controlled Community College or University Assistance Act of 1978, 25 U.S.C. 1801, *et seq.*

(Authority: 20 U.S.C. 1401(17))
Last Amended: 71 FR 46759, Aug. 14, 2006

§ 300.27 Limited English proficient.
Limited English proficient has the meaning given the term 'English learner' in section 8101 of the ESEA.

(Authority: 20 U.S.C. 1401(18))
Last Amended: 82 FR 29759, June 30, 2017

§ 4.3. Definitions. [Excerpt]
The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

...

(15) Institution of higher education or institution--Any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code, §61.003.

...

Last Amended: November 28, 2007, 32 TexReg 8483

§ 89.1203. Definitions. [Excerpt]
The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) English language learner--A person who is in the process of acquiring English and has another language as the first native language. The terms English language learner and limited English proficient student are used interchangeably.

...

Last Amended: May 28, 2012, 37 TexReg 3822

§ 61.003. Definitions. [Excerpt]
In this chapter:

...

(8) "Institution of higher education" means any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency of higher education as defined in this section.

...

Last Amended:
83rd Leg., R.S., Ch. 30 (S.B. 974), Sec. 10, eff. September 1, 2013
83rd Leg., R.S., Ch. 65 (S.B. 120), Sec. 11, eff. May 18, 2013
83rd Leg., R.S., Ch. 179 (H.B. 1844), Sec. 6, eff. September 1, 2013

§ 29.052. Definitions. [Excerpt]
In this subchapter:

(1) "Student of limited English proficiency" means a student whose primary language is other than English and whose English language skills are such that the student has difficulty performing ordinary classwork in English.

...

Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995

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	<p>§ 89.1225. Testing and Classification of Students.</p> <p>(a) For identifying English language learners, school districts shall administer to each student who has a language other than English as identified on the home language survey:</p> <ol style="list-style-type: none"> (1) in prekindergarten through Grade 1, an oral language proficiency test approved by the Texas Education Agency (TEA); and (2) in Grades 2-12, a TEA-approved oral language proficiency test and the English reading and English language arts sections from a TEA-approved norm-referenced assessment, or another test approved by the TEA, unless the norm-referenced standardized achievement instrument is not valid in accordance with subsection (f)(2)(C) of this section. <p>(b) School districts that provide a bilingual education program shall administer an oral language proficiency test in the home language of the student who is eligible to be served in the bilingual education program. If the home language of the student is Spanish, the school district shall administer the Spanish version of the TEA-approved oral language proficiency test that was administered in English. If the home language of the student is other than Spanish, the school district shall determine the student's level of proficiency using informal oral language assessment measures.</p> <p>(c) All the oral language proficiency testing shall be administered by professionals or paraprofessionals who are proficient in the language of the test and trained in language proficiency testing.</p> <p>(d) The grade levels and the scores on each test that shall identify a student as an English language learner shall be established by the TEA. The commissioner of education shall review the approved list of tests, grade levels, and scores annually and update the list.</p> <p>(e) Students with a language other than English shall be administered the required oral language proficiency test in prekindergarten through Grade 12 and norm-referenced standardized achievement instrument in Grades 2-12 within 20 school days of their enrollment.</p> <p>(f) For entry into a bilingual education or English as a second language program, a student shall be identified as an English language learner using the following criteria.</p> <ol style="list-style-type: none"> (1) in prekindergarten through Grade 1, the student's score on the English oral language proficiency test is below the level designated for indicating limited English proficiency under subsection (d) of this section. (2) in Grades 2-12: <ol style="list-style-type: none"> (A) the student's score on the English oral language proficiency test is below the level designated for indicating limited English proficiency under subsection (d) of this section; (B) the student's score on the English reading and/or English language arts sections of the TEA-approved norm-referenced standardized 	<p>§ 29.056. Enrollment of Students in Program.</p> <p>(a) The agency shall establish standardized criteria for the identification, assessment, and classification of students of limited English proficiency eligible for entry into the program or exit from the program. The student's parent must approve a student's entry into the program, exit from the program, or placement in the program. The school district or parent may appeal the decision under Section 29.064. The criteria for identification, assessment, and classification may include:</p> <ol style="list-style-type: none"> (1) results of a home language survey conducted within four weeks of each student's enrollment to determine the language normally used in the home and the language normally used by the student, conducted in English and the home language, signed by the student's parents if the student is in kindergarten through grade 8 or by the student if the student is in grades 9 through 12, and kept in the student's permanent folder by the language proficiency assessment committee; (2) the results of an agency-approved English language proficiency test administered to all students identified through the home survey as normally speaking a language other than English to determine the level of English language proficiency, with students in kindergarten or grade 1 being administered an oral English proficiency test and students in grades 2 through 12 being administered an oral and written English proficiency test; and (3) the results of an agency-approved proficiency test in the primary language administered to all students identified under Subdivision (2) as being of limited English proficiency to determine the level of primary language proficiency, with students in kindergarten or grade 1 being administered an oral primary language proficiency test and students in grades 2 through 12 being administered an oral and written primary language proficiency test. <p>(b) Tests under Subsection (a) shall be administered by professionals or paraprofessionals with the appropriate English and primary language skills and the training required by the test publisher.</p> <p>(c) The language proficiency assessment committee may classify a student as limited English proficiency if:</p> <ol style="list-style-type: none"> (1) the student's ability in English is so limited or the student's disabilities are so severe that assessment procedures cannot be administered; (2) the student's score or relative degree of achievement on the agency-approved English proficiency test is below the levels established by the agency as indicative of reasonable proficiency; (3) the student's primary language proficiency score as measured by an agency-approved test is greater than the student's proficiency in English; or (4) the language proficiency assessment committee determines, based on other information, including a teacher evaluation, parental viewpoint, or student

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	<p>achievement instrument at his or her grade level is below the 40th percentile; or</p> <p>(C) the student's ability in English is so limited that the administration, at his or her grade level, of the reading and language arts sections of a TEA-approved norm-referenced standardized achievement instrument or other test approved by the TEA is not valid.</p> <p>(3) In the absence of data required in paragraph (2)(B) of this subsection, evidence that the student is not academically successful as defined in subsection (j) of this section is required.</p> <p>(4) The admission review and dismissal (ARD) committee in conjunction with the language proficiency assessment committee shall determine an appropriate assessment instrument and designated level of performance for indicating limited English proficiency as required under subsection (d) of this section for students for whom those tests would be inappropriate as part of the individualized education program (IEP). The decision for entry into a bilingual education or English as a second language program shall be determined by the ARD committee in conjunction with the language proficiency assessment committee in accordance with §89.1220(g) of this title (relating to Language Proficiency Assessment Committee).</p> <p>(g) Within 20 school days of their initial enrollment in the school district, students shall be identified as English language learners and enrolled into the required bilingual education or English as a second language program. Prekindergarten and kindergarten students preregistered in the spring shall be identified as English language learners and enrolled in the required bilingual education or English as a second language program within 20 school days of the start of the school year in the fall.</p> <p>(h) For exit from a bilingual education or English as a second language program, a student may be classified as English proficient at the end of the school year in which a student would be able to participate equally in a general education, all-English instructional program. This determination shall be based upon all of the following:</p> <p>(1) TEA-approved tests that measure the extent to which the student has developed oral and written language proficiency and specific language skills in English;</p> <p>(2) satisfactory performance on the reading assessment instrument under the Texas Education Code (TEC), §39.023(a), or a TEA-approved English language arts assessment instrument administered in English, or a score at or above the 40th percentile on both the English reading and the English language arts sections of a TEA-approved norm-referenced standardized achievement instrument for a student who is enrolled in Grade 1 or 2; and</p> <p>(3) TEA-approved criterion-referenced written tests when available, or other TEA-approved tests when criterion-</p>	<p>interview, that the student's primary language proficiency is greater than the student's proficiency in English or that the student is not reasonably proficient in English.</p> <p>(d) Not later than the 10th day after the date of the student's classification as a student of limited English proficiency, the language proficiency assessment committee shall give written notice of the classification to the student's parent. The notice must be in English and the parent's primary language. The parents of students eligible to participate in the required bilingual education program shall be informed of the benefits of the bilingual education or special language program and that it is an integral part of the school program.</p> <p>(e) The language proficiency assessment committee may retain, for documentation purposes, all records obtained under this section.</p> <p>(f) The district may not refuse to provide instruction in a language other than English to a student solely because the student has a disability.</p> <p>(g) A district may transfer a student of limited English proficiency out of a bilingual education or special language program for the first time or a subsequent time if the student is able to participate equally in a regular all-English instructional program as determined by:</p> <p>(1) agency-approved tests administered at the end of each school year to determine the extent to which the student has developed oral and written language proficiency and specific language skills in English;</p> <p>(2) satisfactory performance on the reading assessment instrument under Section 39.023 (a) or an English language arts assessment instrument under Section 39.023(c), as applicable, with the assessment instrument administered in English, or, if the student is enrolled in the first or second grade, an achievement score at or above the 40th percentile in the reading and language arts sections of an English standardized test approved by the agency; and</p> <p>(3) agency-approved criterion-referenced tests and the results of a subjective teacher evaluation.</p> <p>(h) If later evidence suggests that a student who has been transferred out of a bilingual education or special language program has inadequate English proficiency and achievement, the language proficiency assessment committee may reenroll the student in the program. Classification of students for reenrollment must be based on the criteria required by this section.</p> <p>Last Amended: 79th Leg., 3rd C.S., Ch. 5 (H.B. 1), Sec. 3.06, eff. May 31, 2006</p>
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<p>§ 300.28 Local educational agency.</p> <p>(a) <i>General. Local educational agency or LEA</i> means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools.</p> <p>(b) <i>Educational service agencies and other public institutions or agencies.</i> The term includes—</p> <ol style="list-style-type: none"> (1) An educational service agency, as defined in §300.12; and (2) Any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public nonprofit charter school that is established as an LEA under State law. 	<p>referenced tests are not available, and the results of a subjective teacher evaluation.</p> <ol style="list-style-type: none"> (i) A student may not be exited from the bilingual education or English as a second language program in prekindergarten or kindergarten. A school district must ensure that English language learners are prepared to meet academic standards required by the TEC, §28.0211. (j) For determining whether a student who has been exited from a bilingual education or English as a second language program is academically successful, the following criteria shall be used at the end of the school year: <ol style="list-style-type: none"> (1) the student meets state performance standards in English on the criterion-referenced assessment instrument required in the TEC, §39.023, for the grade level as applicable; and (2) the student has passing grades in all subjects and courses taken. (k) The ARD committee in conjunction with the language proficiency assessment committee shall determine an appropriate assessment instrument and performance standard requirement for exit under subsection (h) of this section for students for whom those tests would be inappropriate as part of the IEP. The decision to exit a student who receives both special education and special language services from the bilingual education or English as a second language program is determined by the ARD committee in conjunction with the language proficiency assessment committee in accordance with applicable provisions of subsection (h) of this section. (l) Notwithstanding §101.101 of this title (relating to Group-Administered Tests), all tests used for the purpose of identification, exit, and placement of students and approved by the TEA must be re-normed at least every eight years. <p>Last Amended: May 28, 2012, 37 TexReg 3822</p>	
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(c) *BIA funded schools.* The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, and not subject to the jurisdiction of any SEA other than the Bureau of Indian Affairs, but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the Act with the smallest student population.

(Authority: 20 U.S.C. 1401(19))
Last Amended: 71 FR 46759, Aug. 14, 2006

§ 300.29 Native language.

- (a) *Native language*, when used with respect to an individual who is limited English proficient, means the following:
- (1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section.
 - (2) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.
- (b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

(Authority: 20 U.S.C. 1401(20))
Last Amended: 71 FR 46759, Aug. 14, 2006

§ 300.30 Parent.

- (a) *Parent* means—
- (1) A biological or adoptive parent of a child;
 - (2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
 - (3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
 - (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
 - (5) A surrogate parent who has been appointed in accordance with §300.519 or section 639(a)(5) of the Act.
- (b) (1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to

§ 89.1047. Procedures for Surrogate and Foster Parents. [Excerpt]

- ...
- (b) A foster parent may act as a parent of a child with a disability, in accordance with 34 CFR, §300.30, relating to the definition of parent, if he/she complies with the requirements of TEC, §29.015(b), relating to foster parents, including the completion of the training program described in subsection (a)(1) of this section.
- (1) The foster parent must complete the training program described in subsection (a)(1) of this section within 90 calendar days after the date of initial assignment as the parent. Once a foster parent has completed a training program conducted or provided by the TDFPS, a school district, an education service center, or any entity that receives federal funds to provide IDEA training to parents, the foster parent shall not be required by any school district to complete additional training in order to continue serving as his/her child's surrogate parent or parent or to serve as the surrogate parent or parent for other students with disabilities. School districts may provide ongoing or additional training to foster parents

§ 29.015. Foster Parents. [Excerpt]

- ...
- (b) A foster parent may act as a parent of a child with a disability, as authorized under 20 U.S.C. Section 1415(b) and its subsequent amendments, if:
- (1) the Department of Protective and Regulatory Services is appointed as the temporary or permanent managing conservator of the child;
 - (2) the child has been placed with the foster parent for at least 60 days;
 - (3) the foster parent agrees to:
 - (A) participate in making educational decisions on the child's behalf; and
 - (B) complete a training program for surrogate parents that complies with minimum standards established by agency rule; and
 - (4) the foster parent has no interest that conflicts with the child's interests.
- ...

Last Amended: 76th Leg., ch. 430, Sec. 2, eff. Sept. 1, 1999

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<p>act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.</p> <p>(2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this section.</p> <p>(Authority: 20 U.S.C. 1401(23)) Last Amended: 71 FR 46760, Aug. 14, 2006</p> <p>§ 300.31 Parent training and information center. <i>Parent training and information center</i> means a center assisted under sections 671 or 672 of the Act. (Authority: 20 U.S.C. 1401(25)) Last Amended: 71 FR 467561 Aug. 14, 2006</p> <p>§ 300.32 Personally identifiable. <i>Personally identifiable</i> means information that contains—</p> <p>(a) The name of the child, the child's parent, or other family member;</p> <p>(b) The address of the child;</p> <p>(c) A personal identifier, such as the child's social security number or student number; or</p> <p>(d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.</p> <p>(Authority: 20 U.S.C. 1415(a)) Last Amended: 71 FR 46761, Aug. 14, 2006</p> <p>§ 300.33 Public agency. <i>Public agency</i> includes the SEA, LEAs, ESAs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. (Authority: 20 U.S.C. 1412(a)(11)) Last Amended: 71 FR 46760, Aug. 14, 2006</p> <p>§ 300.34 Related services.</p> <p>(a) <i>General. Related services</i> means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and</p>	<p>and/or parents; however, a district cannot deny an individual who has received the training as described in subsection (a)(1) of this section from serving as the parent on the grounds that the individual has not been trained.</p> <p>(2) school district should provide or arrange for the provision of the training program described in subsection (a)(1) of this section prior to assigning a foster parent to act as a parent but no later than 90 calendar days after assignment.</p> <p>...</p> <p>Last Amended: November 11, 2007, 32 TexReg 8129</p>	<p>§ 29.002. Definition. In this subchapter, "special services" means:</p> <p>(1) special education instruction, which may be provided by professional and supported by paraprofessional personnel in the regular classroom or in an instructional arrangement described by Section 42.151; and</p> <p>(2) related services, which are developmental, corrective,</p>
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<p>assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.</p> <p>(b) <i>Exception; services that apply to children with surgically implanted devices, including cochlear implants.</i></p> <p>(1) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.</p> <p>(2) Nothing in paragraph (b)(1) of this section—</p> <p>(i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP Team to be necessary for the child to receive FAPE.</p> <p>(ii) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or</p> <p>(iii) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in §300.113(b).</p> <p>(c) <i>Individual related services terms defined.</i> The terms used in this definition are defined as follows:</p> <p>(1) <i>Audiology</i> includes—</p> <p>(i) Identification of children with hearing loss;</p> <p>(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;</p> <p>(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;</p> <p>(iv) Creation and administration of programs for prevention of hearing loss;</p> <p>(v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and</p> <p>(vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.</p> <p>(2) <i>Counseling services</i> means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.</p> <p>(3) <i>Early identification and assessment of disabilities in children</i> means the implementation of a formal plan for</p>		<p>supportive, or evaluative services, not instructional in nature, that may be required for the student to benefit from special education instruction and for implementation of a student's individualized education program.</p> <p>Last Amended: 77th Leg., ch. 767, Sec. 1, eff. June 13, 2001</p>
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<p>identifying a disability as early as possible in a child's life.</p> <p>(4) <i>Interpreting services includes—</i></p> <ul style="list-style-type: none"> (i) The following, when used with respect to children who are deaf or hard of hearing: Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and (ii) Special interpreting services for children who are deaf-blind. <p>(5) <i>Medical services</i> means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.</p> <p>(6) <i>Occupational therapy—</i></p> <ul style="list-style-type: none"> (i) Means services provided by a qualified occupational therapist; and (ii) Includes— <ul style="list-style-type: none"> (A) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation; (B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and (C) Preventing, through early intervention, initial or further impairment or loss of function. <p>(7) <i>Orientation and mobility services—</i></p> <ul style="list-style-type: none"> (i) Means services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and (ii) Includes teaching children the following, as appropriate: <ul style="list-style-type: none"> (A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street); (B) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision; (C) To understand and use remaining vision and distance low vision aids; and (D) Other concepts, techniques, and tools. <p>(8) (i) <i>Parent counseling and training</i> means assisting parents in understanding the special needs of their child;</p> <p>(ii) Providing parents with information about child</p>		
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<p>development; and</p> <p>(iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.</p> <p>(9) <i>Physical therapy</i> means services provided by a qualified physical therapist.</p> <p>(10) <i>Psychological services</i> includes—</p> <p>(i) Administering psychological and educational tests, and other assessment procedures;</p> <p>(ii) Interpreting assessment results;</p> <p>(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;</p> <p>(iv) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;</p> <p>(v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and</p> <p>(vi) Assisting in developing positive behavioral intervention strategies.</p> <p>(11) <i>Recreation</i> includes—</p> <p>(i) Assessment of leisure function;</p> <p>(ii) Therapeutic recreation services;</p> <p>(iii) Recreation programs in schools and community agencies; and</p> <p>(iv) Leisure education.</p> <p>(12) <i>Rehabilitation counseling services</i> means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 <i>et seq.</i></p> <p>(13) <i>School health services and school nurse services</i> means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.</p> <p>(14) <i>Social work services in schools</i> includes—</p> <p>(i) Preparing a social or developmental history on a child with a disability;</p> <p>(ii) Group and individual counseling with the child and family;</p>		
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<p>(iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;</p> <p>(iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and</p> <p>(v) Assisting in developing positive behavioral intervention strategies.</p> <p>(15) <i>Speech-language pathology services</i> includes—</p> <p>(i) Identification of children with speech or language impairments;</p> <p>(ii) Diagnosis and appraisal of specific speech or language impairments;</p> <p>(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;</p> <p>(iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and</p> <p>(v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.</p> <p>(16) <i>Transportation</i> includes—</p> <p>(i) Travel to and from school and between schools;</p> <p>(ii) Travel in and around school buildings; and</p> <p>(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.</p> <p>(Authority: 20 U.S.C. 1401(26)) Last Amended: 71 FR 46760, Aug. 14, 2006</p> <p>§ 300.35 [Reserved]</p> <p>§ 300.36 Secondary school. <i>Secondary school</i> means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12. (Authority: 20 U.S.C. 1401(27)) Last Amended: 71 FR 46761, Aug. 14, 2006</p> <p>§ 300.37 Services plan. <i>Services plan</i> means a written statement that describes the special education and related services the LEA will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with §300.132, and is developed and implemented in accordance with</p>		
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§§300.137 through 300.139.
 (Authority: 20 U.S.C. 1412(a)(10)(A))
 Last Amended: 71 FR 46761, Aug. 14, 2006

§ 300.38 Secretary.
Secretary means the Secretary of Education.
 (Authority: 20 U.S.C. 1401(28))
 Last Amended: 71 FR 46761, Aug. 14, 2006

§ 300.39 Special education.

(a) *General.*

- (1) *Special education* means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—
 - (i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
 - (ii) Instruction in physical education.
- (2) *Special education* includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section—
 - (i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;
 - (ii) Travel training; and
 - (iii) Vocational education.

(b) *Individual special education terms defined.* The terms in this definition are defined as follows:

- (1) *At no cost* means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.
- (2) *Physical education* means—
 - (i) The development of—
 - (A) Physical and motor fitness;
 - (B) Fundamental motor skills and patterns; and
 - (C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and
 - (ii) Includes special physical education, adapted physical education, movement education, and motor development.
- (3) *Specially designed instruction* means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—

§ 29.002. Definition.

In this subchapter, "special services" means:

- (1) special education instruction, which may be provided by professional and supported by paraprofessional personnel in the regular classroom or in an instructional arrangement described by Section 42.151; and
- (2) related services, which are developmental, corrective, supportive, or evaluative services, not instructional in nature, that may be required for the student to benefit from special education instruction and for implementation of a student's individualized education program.

Last Amended: 77th Leg., ch. 767, Sec. 1, eff. June 13, 2001

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<p>(i) To address the unique needs of the child that result from the child's disability; and</p> <p>(ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.</p> <p>(4) <i>Travel training</i> means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to—</p> <p>(i) Develop an awareness of the environment in which they live; and</p> <p>(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).</p> <p>(5) <i>Vocational education</i> means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.</p> <p>(Authority: 20 U.S.C. 1401(29)) Last Amended: 71 FR 46761, Aug. 14, 2006</p> <p>§ 300.40 State.</p> <p><i>State</i> means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.</p> <p>(Authority: 20 U.S.C. 1401(31)) Last Amended: 71 FR 46762, Aug. 14, 2006</p> <p>§ 300.41 State educational agency.</p> <p><i>State educational agency</i> or <i>SEA</i> means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.</p> <p>(Authority: 20 U.S.C. 1401(32)) Last Amended: 71 FR 46762, Aug. 14, 2006</p> <p>§ 300.42 Supplementary aids and services.</p> <p><i>Supplementary aids and services</i> means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§300.114 through 300.116.</p> <p>(Authority: 20 U.S.C. 1401(33)) Last Amended: 71 FR 46762, Aug. 14, 2006</p>		
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§ 300.43 Transition services.

- (a) *Transition services* means a coordinated set of activities for a child with a disability that—
- (1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
 - (2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes—
 - (i) Instruction;
 - (ii) Related services;
 - (iii) Community experiences;
 - (iv) The development of employment and other post-school adult living objectives; and
 - (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.
- (b) *Transition services* for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

(Authority: 20 U.S.C. 1401(34))

Last Amended: 71 FR 46762, Aug. 14, 2006

§ 300.44 Universal design.

Universal design has the meaning given the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002.

(Authority: 20 U.S.C. 1401(35))

Last Amended: 71 FR 46762, Aug. 14, 2006

§ 300.45 Ward of the State.

- (a) *General.* Subject to paragraph (b) of this section, *ward of the State* means a child who, as determined by the State where the child resides, is—
- (1) A foster child;
 - (2) A ward of the State; or
 - (3) In the custody of a public child welfare agency.
- (b) *Exception.* Ward of the State does not include a foster child who has a foster parent who meets the definition of a *parent* in §300.30.

(Authority: 20 U.S.C. 1401(36))

Last Amended: 71 FR 46762, Aug. 14, 2006

<p align="center">Subpart B State and Local Eligibility State Eligibility—General</p>	<p align="center">Texas Administrative Code</p>	<p align="center">Texas Education Code</p>
<p>General § 300.100 Eligibility for assistance. A State is eligible for assistance under Part B of the Act for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets the conditions in §§300.101 through 300.176. (Authority: 20 U.S.C. 1412(a) Last Amended: 71 FR 46762, Aug. 14, 2006</p>		<p>§ 29.001 Statewide Plan. The agency shall 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 three and 21. The statewide design shall include the provision of services primarily through school districts and shared services arrangements, supplemented by regional education service centers. The agency shall also develop and implement a statewide plan with programmatic content that includes procedures designed to:</p> <ol style="list-style-type: none"> (1) ensure state compliance with requirements for supplemental federal funding for all state-administered programs involving the delivery of instructional or related services to students with disabilities; (2) facilitate interagency coordination when other state agencies are involved in the delivery of instructional or related services to students with disabilities; (3) periodically assess statewide personnel needs in all areas of specialization related to special education and pursue strategies to meet those needs through a consortium of representatives from regional education service centers, local education agencies, and institutions of higher education and through other available alternatives; (4) ensure that regional education service centers throughout the state maintain a regional support function, which may include direct service delivery and a component designed to facilitate the placement of students with disabilities who cannot be appropriately served in their resident districts; (5) allow the agency to effectively monitor and periodically conduct site visits of all school districts to ensure that rules adopted under this section are applied in a consistent and uniform manner, to ensure that districts are complying with those rules, and to ensure that annual statistical reports filed by the districts and not otherwise available through the Public Education Information Management System under Section 42.006 are accurate and complete; (6) ensure that appropriately trained personnel are involved in the diagnostic and evaluative procedures operating in all districts and that those personnel routinely serve on district admissions, review, and dismissal committees; (7) ensure that an individualized education program for each student with a disability is properly developed, implemented, and maintained in the least restrictive environment that is appropriate to meet the student's educational needs; (8) ensure that, when appropriate, each student with a disability is provided an opportunity to participate in career and

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		<p>technology and physical education classes, in addition to participating in regular or special classes;</p> <p>(9) ensure that each student with a disability is provided necessary related services;</p> <p>(10) ensure that an individual assigned to act as a surrogate parent for a child with a disability, as provided by 20 U.S.C. Section 1415(b), is required to:</p> <ul style="list-style-type: none"> (A) complete a training program that complies with minimum standards established by agency rule; (B) visit the child and the child's school; (C) consult with persons involved in the child's education, including teachers, caseworkers, court-appointed volunteers, guardians ad litem, attorneys ad litem, foster parents, and caretakers; (D) review the child's educational records; (E) attend meetings of the child's admission, review, and dismissal committee; (F) exercise independent judgment in pursuing the child's interests; and (G) exercise the child's due process rights under applicable state and federal law; and <p>(11) ensure that each district develops a process to be used by a teacher who instructs a student with a disability in a regular classroom setting:</p> <ul style="list-style-type: none"> (A) to request a review of the student's individualized education program; (B) to provide input in the development of the student's individualized education program; (C) that provides for a timely district response to the teacher's request; and (D) that provides for notification to the student's parent or legal guardian of that response. <p>Last Amended: 84th Leg., R.S., Ch. 1192 (S.B. 1259), Sec. 1, eff. June 19, 2015</p> <p>§ 29.007. Shared Service Arrangements . School districts may enter into a written contract to jointly operate their special education programs. The contract must be approved by the commissioner. Funds to which the cooperating districts are entitled may be allocated to the districts jointly as shared services arrangement units or shared services arrangement funds in accordance with the shared services arrangement districts' agreement. Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995</p> <p>§ 29.308. Regional Programs. Regional programs for students who are deaf or hard of hearing shall meet the unique communication needs of students who can benefit from those programs. Appropriate funding for those</p>
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		<p>programs shall be consistent with federal and state law, and money appropriated to school districts for educational programs and services for students who are deaf or hard of hearing may not be allocated or used for any other program or service. Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995</p> <p>§ 29.311. Educational Programs.</p> <p>(a) Educational programs for students who are deaf or hard of hearing must be coordinated with other public and private agencies, including:</p> <ol style="list-style-type: none"> (1) agencies operating early childhood intervention programs; (2) preschools; (3) agencies operating child development programs; (4) nonpublic, nonsectarian schools; (5) agencies operating regional occupational centers and programs; and (6) the Texas School for the Deaf. <p>(b) As appropriate, the programs must also be coordinated with postsecondary and adult programs for persons who are deaf or hard of hearing. Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995</p> <p>§ 30.002. Education for Children with Visual Impairments. [Excerpt]</p> <p>(a) The agency shall develop and administer a comprehensive statewide plan for the education of children with visual impairments who are under 21 years of age that will ensure that the children have an opportunity for achievement equal to the opportunities afforded their peers with normal vision. ...</p> <p>(c) The comprehensive statewide plan for the education of children with visual impairments must: ...</p> <ol style="list-style-type: none"> (4) include methods to ensure that children with visual impairments receiving special education services in school districts receive, before being placed in a classroom setting or within a reasonable time after placement: <ol style="list-style-type: none"> (A) evaluation of the impairment; and (B) instruction in an expanded core curriculum, which is required for students with visual impairments to succeed in classroom settings and to derive lasting, practical benefits from the education provided by school districts, including instruction in: <ol style="list-style-type: none"> (i) compensatory skills, such as braille and concept development, and other skills needed to access the rest of the curriculum;
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		<ul style="list-style-type: none"> (ii) orientation and mobility; (iii) social interaction skills; (iv) career planning; (v) assistive technology, including optical devices; (vi) independent living skills; (vii) recreation and leisure enjoyment; (viii) self-determination; and (ix) sensory efficiency; <p>...</p> <p>(d) In developing, administering, and coordinating the statewide plan, the agency shall encourage the use of all pertinent resources, whether those resources exist in special education programs or in closely related programs operated by other public or private agencies, through encouraging the development of shared services arrangement working relationships and by assisting in the development of contractual arrangements between school districts and other organizations. The agency shall discourage interagency competition, overlap, and duplication in the development of specialized resources and the delivery of services.</p> <p>...</p> <p>(g) To facilitate implementation of this section, the commissioner shall develop a system to distribute from the foundation school fund to school districts or regional education service centers a special supplemental allowance for each student with a visual impairment and for each student with a serious visual disability and another medically diagnosed disability of a significantly limiting nature who is receiving special education services through any approved program. The supplemental allowance may be spent only for special services uniquely required by the nature of the student's disabilities and may not be used in lieu of educational funds otherwise available under this code or through state or local appropriations.</p> <p>Last Amended: 83rd Leg., R.S., Ch. 505 (S.B. 39), Sec. 1, eff. June 14, 2013 83rd Leg., R.S., Ch. 637 (H.B. 590), Sec. 1, eff. September 1, 2013</p> <p>§ 30.021. Purpose of Texas School for the Blind and Visually Impaired. [Excerpt]</p> <p>...</p> <p>(c) The school shall conduct supplemental programs, such as summer programs and student exchange programs, and shall consider information from sources throughout the state regarding the nature of those programs and students to be served.</p> <p>(d) The school shall provide statewide services to parents of students with visual impairments, school districts, regional education service centers, and other agencies serving</p>
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		<p>students with visual impairments, including students who have one or more disabilities in addition to the visual impairment, such as students who are deaf-blind. Those services must include:</p> <ol style="list-style-type: none"> (1) developing and providing local, regional, and statewide training for parents of students with visual impairments and professionals who work with persons with visual impairments; (2) providing consultation and technical assistance to parents and professionals related to special education and related services for students; (3) developing and disseminating reference materials including materials in the areas of curriculum, instructional methodology, and educational technology; (4) providing information related to library resources, adapted materials, current research, technology resources, and teaching, assessment, and transition of students with visual impairments; (5) operating programs for lending educational and technological materials to school districts and regional education service centers; and (6) facilitating the preparation of teachers for visually impaired students by providing assistance to colleges and universities as well as other teacher preparation programs. <p>(e) The school shall cooperate with public and private agencies and organizations serving students and other persons with visual impairments in the planning, development, and implementation of effective educational and rehabilitative service delivery systems associated with educating students with visual impairments. To maximize and make efficient use of state facilities, funding, and resources, the services provided in this area may include conducting a cooperative program with other agencies to serve students who have graduated from high school by completing all academic requirements applicable to students in regular education, excluding satisfactory performance under Section 39.025, who are younger than 22 years of age on September 1 of the school year and who have identified needs related to vocational training, independent living skills, orientation and mobility, social and leisure skills, compensatory skills, or remedial academic skills.</p> <p>(f) The school may operate an on-campus canteen to offer food service at mealtimes and during other times of the day.</p> <p>(g) If a school district or another educational entity requests an assessment of a student's educational or related needs related to visual impairment, the school may conduct an assessment and charge a reasonable fee for the assessment.</p> <p>Last Amended: 80th Leg., R.S., Ch. 1312 (S.B. 1031), Sec. 6, eff. September 1, 2007</p>
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		<p>§ 30.051. Purpose of Texas School for the Deaf. [Excerpt]</p> <p>...</p> <ul style="list-style-type: none"> (b) The school shall serve as a primary statewide resource center promoting excellence in education for students who are deaf or hard of hearing through research, training, and demonstration projects. (c) The school shall work in partnership with state, regional, and local agencies to provide new or improved programs or methods to serve the previously unmet or future needs of persons throughout the state who are deaf or hard of hearing. (d) The school shall cooperate with public and private agencies and organizations serving students and other persons who are deaf or hearing impaired in the planning, development, and implementation of effective educational and rehabilitative service delivery systems associated with educating students who are deaf or hard of hearing. To maximize and make efficient use of state facilities, funding, and resources, the services provided in this area may include conducting a cooperative program with other agencies to serve persons who have graduated from high school and who have identified needs related to vocational training, independent living skills, and social and leisure skills. (e) If a school district or another educational entity requests an assessment of a student's educational or related needs related to hearing impairment, the school may conduct an assessment and charge a reasonable fee for the assessment. <p>Last Amended: 79th Leg., 3rd C.S., Ch. 5 (H.B. 1), Sec. 7.01, eff. May 31, 2006</p> <p>§ 30.083. Statewide Plan.</p> <ul style="list-style-type: none"> (a) The director of services shall develop and administer a comprehensive statewide plan for educational services for students who are deaf or hard of hearing, including continuing diagnosis and evaluation, counseling, and teaching. The plan shall be designed to accomplish the following objectives: <ul style="list-style-type: none"> (1) providing assistance and counseling to parents of students who are deaf or hard of hearing in regional day school programs for the deaf and admitting to the programs students who have a hearing loss that interferes with the processing of linguistic information; (2) enabling students who are deaf or hard of hearing to reside with their parents or guardians and be provided an appropriate education in their home school districts or in regional day school programs for the deaf; (3) enabling students who are deaf or hard of hearing who are unable to attend schools at their place of residence and whose parents or guardians live too far from facilities of regional day school programs for the deaf for daily commuting to be accommodated in foster homes or other residential school facilities provided for by the agency so that those children may attend a regional day
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<p>FAPE Requirements</p> <p>§ 300.101 Free appropriate public education (FAPE).</p> <p>(a) <i>General.</i> A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in §300.530(d).</p> <p>(b) <i>FAPE for children beginning at age 3.</i></p> <p>(1) Each State must ensure that—</p> <p>(i) The obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday; and</p> <p>(ii) An IEP or an IFSP is in effect for the child by that date, in accordance with §300.323(b).</p> <p>(2) If a child's third birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP or IFSP will begin.</p> <p>(c) <i>Children advancing from grade to grade.</i></p> <p>(1) Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.</p> <p>(2) The determination that a child described in paragraph (a) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making eligibility</p>	<p>§ 89.1001. Scope and Applicability. [Excerpt]</p> <p>...</p> <p>(c) A school district having a residential facility that is licensed by appropriate state agencies and located within the district's boundaries must provide special education and related services to eligible students residing in the facility. If, after contacting the facility to offer services to eligible students with disabilities, the district determines that educational services are provided through a charter school, approved non-public school, or a facility operated private school, the district is not required to provide services. However, the district shall annually contact the facility to offer services to eligible students with disabilities.</p> <p>Last Amended: March 6, 2001, 26 TexReg 1837</p> <p>§ 89.1035. Age Ranges for Student Eligibility.</p> <p>(a) Pursuant to state and federal law, services provided in accordance with this subchapter must be available to all eligible students ages 3-21. Services will be made available to eligible students on their third birthday. Graduation with a regular high school diploma pursuant to §89.1070 (b)(1), (b)(2)(D), (g)(1), (g)(2), (g)(3), or (g)(4)(D) of this title (relating to Graduation Requirements) terminates a student's eligibility to receive services in accordance with this subchapter. An eligible student receiving special education services who is 21 years of age on September 1 of a school year will be eligible for services through the end of that school year or</p>	<p>school program for the deaf;</p> <p>(4) enrolling in the Texas School for the Deaf those students who are deaf or hard of hearing whose needs can best be met in that school and designating the Texas School for the Deaf as the statewide educational resource for students who are deaf or hard of hearing;</p> <p>(5) encouraging students in regional day school programs for the deaf to attend general education classes on a part-time, full-time, or trial basis; and</p> <p>(6) recognizing the need for development of language and communications abilities in students who are deaf or hard of hearing, but also calling for the use of methods of communication that will meet the needs of each individual student, with each student assessed thoroughly so as to ascertain the student's potential for communications through a variety of means, including through oral or aural means, fingerspelling, or sign language.</p> <p>(b) The director of services may establish separate programs to accommodate diverse communication methodologies.</p> <p>Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995</p> <p>§ 29.003. Eligibility Criteria. [Excerpt]</p> <p>...</p> <p>(b) A student is eligible to participate in a school district's special education program if the student:</p> <p>(1) is not more than 21 years of age and has a visual or auditory impairment that prevents the student from being adequately or safely educated in public school without the provision of special services; or</p> <p>(2) is at least three but not more than 21 years of age and has one or more of the following disabilities that prevents the student from being adequately or safely educated in public school without the provision of special services:</p> <p>(A) physical disability;</p> <p>(B) mental retardation;</p> <p>(C) emotional disturbance;</p> <p>(D) learning disability;</p> <p>(E) autism;</p> <p>(F) speech disability; or</p> <p>(G) traumatic brain injury.</p> <p>Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995</p>
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<p>determinations. (Authority: 20 U.S.C. 1412(a)(1)(A)) Last Amended: 71 FR 46762, Aug. 14, 2006</p>	<p>until graduation with a regular high school diploma pursuant to §89.1070 (b)(1), (b)(2)(D), (g)(1), (g)(2), (g)(3), or (g)(4)(D) of this title, whichever comes first.</p> <p>(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.</p> <p>Last Amended: December 2, 2015, 40 TexReg 8642</p> <p>§ 89.1085. Referral for the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf Services. [Excerpt]</p> <p>...</p> <p>(b) In the event that a student is placed by his or her ARD committee at either the TSBVI or the TSD, the student's "resident school district," as defined in subsection (e) of this section, shall be responsible for assuring that a free appropriate public education (FAPE) is provided to the student at the TSBVI or the TSD, as applicable, in accordance with the Individuals with Disabilities Education Act (IDEA), 20 United States Code (USC), §§1400 et seq., 34 CFR, Part 300, state statutes, and rules of the State Board of Education (SBOE) and the commissioner of education. If representatives of the resident school district and representatives of the TSBVI or the TSD disagree, as members of a student's ARD committee, with respect to a recommendation by one or more members of the student's ARD committee that the student be evaluated for placement, initially placed, or continued to be placed at the TSBVI or TSD, as applicable, the representatives of the resident school district and the TSBVI or TSD, as applicable, may seek resolution through the mediation procedures adopted by the Texas Education Agency or through any due process hearing to which the resident school district or the TSBVI or the TSD are entitled under the IDEA, 20 USC, §§1400, et seq.</p> <p>...</p> <p>(d) In addition to the provisions of subsections (a)-(c) of this section, and as provided in TEC, §30.057, the TSD shall provide services in accordance with TEC, §30.051, to any eligible student with a disability for whom the TSD is an appropriate placement if the student has been referred for admission by the student's parent or legal guardian, a person with legal authority to act in place of the parent or legal guardian, or the student, if the student is age 18 or older, at any time during the school year if the referring person chooses the TSD as the appropriate placement for the student rather than placement in the student's resident school district or regional program determined by the student's ARD committee. For students placed at the TSD pursuant to this subsection, the TSD shall be responsible for assuring that a FAPE is provided to the student at the TSD, in accordance with IDEA, 20 USC, §§1400, et seq., 34 CFR, Part 300, state statutes, and rules of the SBOE and the commissioner of education.</p>	<p>§ 29.012. Residential Facilities. [Excerpt]</p> <p>...</p> <p>(c) For purposes of enrollment in a school, a person who resides in a residential facility is considered a resident of the school district or geographical area served by the open-enrollment charter school in which the facility is located.</p> <p>...</p> <p>Last Amended: 85th Leg., R.S., Ch. 1026 (H.B. 1569), Sec. 1, eff. June 15, 2017 85th Leg., R.S., Ch. 764 (S.B. 2080), Sec. 1, June 12, 2017</p> <p>§ 30.002. Education for Children with Visual Impairments. [Excerpt]</p> <p>...</p> <p>(c) The comprehensive statewide plan for the education of children with visual impairments must:</p> <p>...</p> <p>(4) include methods to ensure that children with visual impairments receiving special education services in school districts receive, before being placed in a classroom setting or within a reasonable time after placement:</p> <p>(A) evaluation of the impairment; and</p> <p>(B) instruction in an expanded core curriculum, which is required for students with visual impairments to succeed in classroom settings and to derive lasting, practical benefits from the education provided by school districts, including instruction in:</p> <p>(i) compensatory skills, such as braille and concept development, and other skills needed to access the rest of the curriculum;</p> <p>(ii) orientation and mobility;</p> <p>(iii) social interaction skills;</p> <p>(iv) career planning;</p> <p>(v) assistive technology, including optical devices;</p> <p>(vi) independent living skills;</p> <p>(vii) recreation and leisure enjoyment;</p> <p>(viii) self-determination; and</p> <p>(ix) sensory efficiency;</p> <p>...</p> <p>(e) Each eligible blind or visually impaired student is entitled to receive educational programs according to an individualized education program that:</p> <p>(1) is developed in accordance with federal and state requirements for providing special education services;</p> <p>(2) is developed by a committee composed as required by</p>
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	<p>(e) For purposes of this section and §89.1090 of this title (relating to Transportation of Students Placed in a Residential Setting, Including the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf), the "resident school district" is the school district in which the student would be enrolled under TEC, §25.001, if the student were not placed at the TSBVI or the TSD.</p> <p>Last Amended: November 11, 2007, 32 TexReg 8129.</p> <p>§ 89.1096. Provision of Services for Students Placed by their Parents in Private Schools or Facilities. [Excerpt]</p> <p>...</p> <p>(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 enrollment.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>...</p> <p>Last Amended: November 11, 2007, 32 TexReg 8129</p> <p>§ 89.1115. Memorandum of Understanding Concerning Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities. [Excerpt]</p> <p>...</p> <p>(d) Terms of MOU. The parties agree to the following terms:</p> <p>(1) The responsibilities of LEAs and RFs related to the provision of a FAPE to students with disabilities who</p>	<p>federal law;</p> <p>(3) reflects that the student has been provided a detailed explanation of the various service resources available to the student in the community and throughout the state;</p> <p>(4) provides a detailed description of the arrangements made to provide the student with the evaluation and instruction required under Subsection (c)(4); and</p> <p>(5) sets forth the plans and arrangements made for contacts with and continuing services to the student beyond regular school hours to ensure the student learns the skills and receives the instruction required under Subsection (c)(4)(B).</p> <p>...</p> <p>Last Amended: 83rd Leg., R.S., Ch. 505 (S.B. 39), Sec. 1, eff. June 14, 2013 83rd Leg., R.S., Ch. 637 (H.B. 590), Sec. 1, eff. September 1, 2013</p> <p>§ 30.021. Purpose of Texas School for the Blind and Visually Impaired. [Excerpt]</p> <p>...</p> <p>(b) The school district in which a student resides is responsible for assuring that a free appropriate public education is provided to each district student placed in the regular school year program of the school and that all legally required meetings for the purpose of developing and reviewing the student's individualized educational program are conducted. If the school disagrees with a district's individualized education program committee recommendation that a student be evaluated for placement, initially placed, or continued to be placed at the school, the district or the school may seek resolution according to a procedure established by the commissioner or through any due process hearing to which the district or school is entitled under the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.).</p> <p>...</p> <p>Last Amended: 80th Leg., R.S., Ch. 1312 (S.B. 1031), Sec. 6, eff. September 1, 2007</p> <p>§ 30.081. Legislative Intent Concerning Regional Day Schools For The Deaf.</p> <p>The legislature, by this subchapter, intends to continue a process of providing on a statewide basis a suitable education to deaf or hard of hearing students who are under 21 years of age and assuring that those students have the opportunity to become independent citizens.</p> <p>Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995</p>
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<p>§ 300.102 Limitation—exception to FAPE for certain ages.</p> <p>(a) <i>General.</i> The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:</p> <p>(1) Children aged 3, 4, 5, 18, 19, 20, or 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children of those ages.</p> <p>(2)</p> <p>(i) Children aged 18 through 21 to the extent that State law does not require that special education and related services under Part B of the Act be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility—</p> <p>(A) Were not actually identified as being a child with a disability under §300.8; and</p> <p>(B) Did not have an IEP under Part B of the Act.</p> <p>(ii) The exception in paragraph (a)(2)(i) of this section does not apply to children with disabilities, aged 18 through 21, who—</p> <p>(A) Had been identified as a child with a disability under §300.8 and had received services in accordance with an IEP, but who left school prior to their incarceration; or</p> <p>(B) Did not have an IEP in their last educational setting, but who had actually been identified as a child with a disability under §300.8.</p> <p>(3)</p> <p>(i) Children with disabilities who have graduated from high school with a regular high school</p>	<p>reside in RFs are established as follows.</p> <p>(A) LEAs must provide or ensure the provision of a FAPE to students with disabilities residing in RFs in accordance with IDEA, applicable federal regulations, and state laws and rules.</p> <p>(i) Except as provided in paragraph (2) of this subsection, an LEA must provide or ensure the provision of a FAPE for a student with a disability residing in an RF located in the geographical area served by that LEA.</p> <p>(ii) If an LEA places a student with a disability in an RF for educational purposes, the placing LEA must provide or ensure the provision of a FAPE to the student.</p> <p>...</p> <p>Last Amended: August 6, 2002, 27 TexReg 6851</p> <p>§ 89.1035. Age Ranges for Student Eligibility. [Excerpt]</p> <p>(a) Pursuant to state and federal law, services provided in accordance with this subchapter must be available to all eligible students ages 3-21. Services will be made available to eligible students on their third birthday. Graduation with a regular high school diploma pursuant to §89.1070 (b)(1), (b)(2)(D), (g)(1), (g)(2), (g)(3), or (g)(4)(D) of this title (relating to Graduation Requirements) terminates a student's eligibility to receive services in accordance with this subchapter. An eligible student receiving special education services who is 21 years of age on September 1 of a school year will be eligible for services through the end of that school year or until graduation with a regular high school diploma pursuant to §89.1070 (b)(1), (b)(2)(D), (g)(1), (g)(2), (g)(3), or (g)(4)(D) of this title, whichever comes first.</p> <p>...</p> <p>Last Amended: December 2, 2015, 40 TexReg 8642</p> <p>§ 89.1070. Graduation Requirements. [Excerpt]</p> <p>(a) Graduation with a regular high school diploma under subsections (b)(1), (b)(2)(D), (g)(1), (g)(2), (g)(3), or (g)(4)(D) of this section terminates a student's eligibility for special education services under this subchapter and Part B of the Individuals with Disabilities Education Act and entitlement to the benefits of the Foundation School Program, as provided in Texas Education Code (TEC), §42.003(a).</p> <p>...</p> <p>Last Amended: September 16, 2015, 40 TexReg 6107</p>	
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<p>diploma.</p> <p>(ii) The exception in paragraph (a)(3)(i) of this section does not apply to children who have graduated from high school but have not been awarded a regular high school diploma.</p> <p>(iii) Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with §300.503.</p> <p>(iv) As used in paragraphs (a)(3)(i) through (iii) of this section, the term <i>regular high school diploma</i> means the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards, or a higher diploma, except that a regular high school diploma shall not be aligned to the alternate academic achievement standards described in section 1111(b)(1)(E) of the ESEA. A regular high school diploma does not include a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential.</p> <p>(4) Children with disabilities who are eligible under subpart H of this part, but who receive early intervention services under Part C of the Act.</p> <p>(b) <i>Documents relating to exceptions.</i> The State must assure that the information it has provided to the Secretary regarding the exceptions in paragraph (a) of this section, as required by §300.700 (for purposes of making grants to States under this part), is current and accurate.</p> <p>(Authority: 20 U.S.C. 1412(a)(1)(B)-(C) and 7801(43)) Last Amended: 82 FR 29759, June 30, 2017</p> <p>Other FAPE Requirements</p> <p>§ 300.103 FAPE—methods and payments.</p> <p>(a) Each State may use whatever State, local, Federal, and private sources of support that are available in the State to meet the requirements of this part. For example, if it is necessary to place a child with a disability in a residential facility, a State could use joint agreements between the agencies involved for sharing the cost of that placement.</p> <p>(b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.</p> <p>(c) Consistent with §300.323(c), the State must ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being</p>	<p>§ 89.61. Contracting for Residential Educational Placements for Students with Disabilities. [Excerpt]</p> <p>(a) Residential placement. A school district may contract for residential placement of a student when the student's admission, review, and dismissal (ARD) committee determines that a residential placement is necessary in order for the student to receive a free appropriate public education (FAPE).</p> <p>(1) A school district may contract for a residential placement of a student only with either public or private residential facilities which maintain current and valid licensure by the Texas Department of Aging and Disability Services, Texas Department of Family and Protective Services, or Department of State Health Services for the particular disabling condition and age of</p>	<p>§ 29.008. Contracts for Services; Residential Placement. [Excerpt]</p> <p>(a) A school district, shared services arrangement unit, or regional education service center may contract with a public or private facility, institution, or agency inside or outside of this state for the provision of services to students with disabilities. Each contract for residential placement must be approved by the commissioner. The commissioner may approve a residential placement contract only after at least a programmatic evaluation of personnel qualifications, adequacy of physical plant and equipment, and curriculum content. The commissioner may approve either the whole or a part of a facility or program.</p> <p>(b) Except as provided by Subsection (c), costs of an approved contract for residential placement may be paid from a</p>
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<p>determined. (Authority: 20 U.S.C. 1401(8), 1412(a)(1)) Last Amended: 72 FR 61306, Oct. 30, 2007</p>	<p>the student. A school district may contract for an out-of-state residential placement in accordance with the provisions of subsection (c)(3) of this section.</p> <p>(2) Subject to subsections (b) and (c) of this section, the district may contract with a residential facility to provide some or all of the special education services listed in the contracted student's individualized education program (IEP). If the facility provides any educational services listed in the student's IEP, the facility's education program must be approved by the commissioner of education in accordance with subsection (c) of this section.</p> <p>(3) A school district which intends to contract for residential placement of a student with a residential facility under this section shall notify the Texas Education Agency (TEA) of its intent to contract for the residential placement through the residential application process described in subsection (b) of this section.</p> <p>(4) The school district has the following responsibilities when making a residential placement.</p> <p>...</p> <p>(H) When a student who is residentially placed by a school district changes his residence to another Texas school district, and the student continues in the contracted placement, the school district which negotiated the contract shall be responsible for the residential contract for the remainder of the school year.</p> <p>(b) Application approval process. Requests for approval of state and federal funding for residentially placed students shall be negotiated on an individual student basis through a residential application submitted by the school district to the TEA.</p> <p>(1) A residential application may be submitted for educational purposes only. The residential application shall not be approved if the application indicates that the:</p> <p>(A) placement is due primarily to the student's medical problems;</p> <p>(B) placement is due primarily to problems in the student's home;</p> <p>(C) district does not have a plan, including timelines and criteria, for the student's return to the local school program;</p> <p>(D) district did not attempt to implement lesser restrictive placements prior to residential placement (except in emergency situations as documented by the student's ARD committee);</p> <p>(E) placement is not cost effective when compared with other alternative placements; and/or</p> <p>(F) residential facility provides unfundable/unapprovable services.</p>	<p>combination of federal, state, and local funds. The local share of the total contract cost for each student is that portion of the local tax effort that exceeds the district's local fund assignment under Section 42.252, divided by the average daily attendance in the district. If the contract involves a private facility, the state share of the total contract cost is that amount remaining after subtracting the local share. If the contract involves a public facility, the state share is that amount remaining after subtracting the local share from the portion of the contract that involves the costs of instructional and related services. For purposes of this subsection, "local tax effort" means the total amount of money generated by taxes imposed for debt service and maintenance and operation less any amounts paid into a tax increment fund under Chapter 311, Tax Code.</p> <p>(c) When a student, including one for whom the state is managing conservator, is placed primarily for care or treatment reasons in a private residential facility that operates its own private education program, none of the costs may be paid from public education funds. If a residential placement primarily for care or treatment reasons involves a private residential facility in which the education program is provided by the school district, the portion of the costs that includes appropriate education services, as determined by the school district's admission, review, and dismissal committee, shall be paid from state and federal education funds.</p> <p>...</p> <p>Last Amended: 75th Leg., ch. 1071, Sec. 3, eff. Sept. 1, 1997</p> <p>§ 30.003. Support of Students Enrolled in Texas School for the Blind and Visually Impaired or Texas School for the Deaf.</p> <p>(a) For each student enrolled in the Texas School for the Blind and Visually Impaired or the Texas School for the Deaf, the school district that is responsible for providing appropriate special education services to the student shall share the cost of the student's education as provided by this section.</p> <p>(b) If the student is admitted to the school for a full-time program for the equivalent of two long semesters, the district's share of the cost is an amount equal to the dollar amount of maintenance and debt service taxes imposed by the district for that year divided by the district's average daily attendance for the preceding year.</p> <p>(c) If the student is admitted for a program less than two complete semesters in duration, other than a summer program, the district's share of the cost is an amount equal to the amount that would be the district's share under Subsection (b) for a full-time program multiplied by the quotient resulting from the number of full-time equivalent days in the program divided by the minimum number of days of instruction for students as provided by Section 25.081.</p> <p>(d) Each school district and state institution shall provide to the commissioner the necessary information to determine the district's share under this section. The information must be reported to the commissioner on or before a date set by rule</p>
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	<p>(2) The residential placement, if approved by the TEA, shall be funded as follows:</p> <p>(A) the education cost of residential contracts shall be funded with state funds on the same basis as nonpublic day school contract costs according to Texas Education Code, §42.151;</p> <p>(B) related services and residential costs for residential contract students shall be funded from a combination of fund sources. After expending any other available funds, the district must expend its local tax share per average daily attendance and 25% of its Individuals with Disabilities Education Act, Part B, (IDEA-B) formula tentative entitlement (or an equivalent amount of state and/or local funds) for related services and residential costs. If this is not sufficient to cover all costs of the residential placement, the district through the residential application process may receive additional IDEA-B discretionary funds to pay the balance of the residential contract placement(s) costs; and</p> <p>(C) funds generated by the formula for residential costs described in subsection (b)(2)(B) of this section shall not exceed the daily rate recommended by the Texas Department of Family and Protective Services for the specific level of care in which the student is placed.</p> <p>(c) Approval of the education program for facilities which provide educational services. Residential facilities which provide educational services must have their educational programs approved for contracting purposes by the commissioner of education.</p> <p>(1) If the education program of a residential facility which is not approved by the commissioner of education is being considered for a residential placement by a local school district, the school district should notify the TEA in writing of its intent to place a student at the facility. The TEA shall begin approval procedures and conduct an on-site visit to the facility within 30 calendar days after the TEA has been notified by the local school district. Approval of the education program of a residential facility may be for one, two, or three years.</p> <p>(2) The commissioner of education shall renew approvals and issue new approvals only for those facilities which have contract students already placed or which have a pending request for residential placement from a school district. This approval does not apply to residential facilities which only provide related services or residential facilities in which the local accredited school district where the facility is located provides the educational program.</p> <p>(3) School districts which contract for out-of-state residential placement shall do so in accordance with the rules for in-state residential placement in this section, except that the facility must be approved by the</p>	<p>of the State Board of Education. After determining the amount of a district's share for all students for which the district is responsible, the commissioner shall deduct that amount from the payments of foundation school funds payable to the district. Each deduction shall be in the same percentage of the total amount of the district's share as the percentage of the total foundation school fund entitlement being paid to the district at the time of the deduction, except that the amount of any deduction may be modified to make necessary adjustments or to correct errors. The commissioner shall provide for remitting the amount deducted to the appropriate school at the same time at which the remaining funds are distributed to the district. If a district does not receive foundation school funds or if a district's foundation school entitlement is less than the amount of the district's share under this section, the commissioner shall direct the district to remit payment to the commissioner, and the commissioner shall remit the district's share to the appropriate school.</p> <p>(e) For each student enrolled in the Texas School for the Blind and Visually Impaired or the Texas School for the Deaf, the appropriate school is entitled to the state available school fund apportionment.</p> <p>(f) The commissioner, with the assistance of the comptroller, shall determine the amount that the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf would have received from the available school fund if Chapter 28, Acts of the 68th Legislature, 2nd Called Session, 1984, had not transferred statutorily dedicated taxes from the available school fund to the foundation school fund. That amount, minus any amount the schools do receive from the available school fund, shall be set apart as a separate account in the foundation school fund and appropriated to those schools for educational purposes.</p> <p>(f-1) The commissioner shall determine the total amount that the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf would have received from school districts in accordance with this section if H.B. No. 1, Acts of the 79th Legislature, 3rd Called Session, 2006, had not reduced the districts' share of the cost of providing education services. That amount, minus any amount the schools do receive from school districts, shall be set aside as a separate account in the foundation school fund and appropriated to those schools for educational purposes.</p> <p>(g) The State Board of Education may adopt rules as necessary to implement this section.</p> <p>(h) Expired. Last Amended: 79th Leg., 3rd C.S., Ch. 5 (H.B. 1), Sec. 1.10, eff. May 31, 2006</p>
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<p>§ 300.104 Residential placement. If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child. (Authority: 20 U.S.C. 1412(a)(1), 1412(a)(10)(B)) Last Amended: 71 FR 46763, Aug. 14, 2006</p> <p>§ 300.105 Assistive technology. (a) Each public agency must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §§300.5 and 300.6, respectively, are made available to a child with a disability if required as a part of the child's— <ol style="list-style-type: none"> (1) Special education under §300.39; (2) Related services under §300.34; or (3) Supplementary aids and services under §§300.42 and 300.114(a)(2)(ii). (b) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Team determines that</p>	<p>appropriate agency in the state in which the facility is located, rather than by the commissioner of education in Texas. Last Amended: August 24, 2010, 35 TexReg 7212</p> <p>§ 89.62. Support of Students Enrolled in the Texas School for the Blind and Visually Impaired and Texas School for the Deaf. [Excerpt] (a) For each student enrolled in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf, the school district responsible for providing appropriate special education and related services to the student shall share the cost of the student's education (excluding the summer programs) as provided under the Texas Education Code, §30.003. <ol style="list-style-type: none"> (1) The information required in accordance with the Texas Education Code, §30.003(d), must be submitted in a form prescribed by the commissioner of education within 30 calendar days after the student enrolls in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf. (2) School districts required to remit their shares to the Texas Education Agency in accordance with the Texas Education Code, §30.003(d), shall do so within 60 days of notification by the commissioner of education. <p>... Last Amended: September 1, 1996, 21 TexReg 5690</p> <p>§ 89.1056. Transfer of Assistive Technology Devices. (a) Unless otherwise specifically defined in this section, the terms used in this section shall have the meanings ascribed to such terms in Texas Education Code (TEC), §30.0015, (Transfer of Assistive Technology Devices). (b) A transfer of an assistive technology device (ATD) pursuant to TEC, §30.0015, shall be in accordance with a transfer agreement which incorporates the standards described in TEC, §30.0015(c), and which includes, specifically, the following. <ol style="list-style-type: none"> (1) The transferor and transferee must represent and agree that the terms of the transfer are based on the fair </p> </p>	<p>§ 30.0015. Transfer of Assistive Technology Devices. (a) In this section: <ol style="list-style-type: none"> (1) "Assistive technology device" means any device, including equipment or a product system, that is used to increase, maintain, or improve functional capabilities of a student with a disability. (2) "Student with a disability" means a student who is eligible to participate in a school district's special education program under Section 29.003. (3) "Transfer" means the process by which a school district that has purchased an assistive technology device may sell, lease, or loan the device for the continuing use of a student with a disability changing the school of </p>
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<p>the child needs access to those devices in order to receive FAPE. (Authority: 20 U.S.C. 1412(a)(1), 1412(a)(12)(B)(i)) Last Amended: 82 FR 29759, June 30, 2017</p>	<p>market value of the ATD, determined in accordance with generally accepted accounting principles.</p> <p>(2) The informed consent of the parent of the student with a disability for whom the ATD is being transferred must be obtained before the transfer of an ATD pursuant to TEC, §30.0015. The procedures employed by a school district in obtaining such informed consent shall be consistent with the procedures employed by the district to obtain parental consent under 34 Code of Federal Regulations (CFR), §300.300. If the student has the legal capacity to enter into a contract, the informed consent may be obtained from the student. Consistent with 34 CFR, §300.505(c), informed parental or adult student consent need not be obtained if the school district can demonstrate that it has taken reasonable measures to obtain that consent, and the student's parent or the adult student has failed to respond. To meet the reasonable measures requirement, the school district must use procedures consistent with those described in 34 CFR, §300.322(d).</p> <p>(3) If the transfer is a sale, then the sale of the ATD shall be evidenced by a "Uniform Transfer Agreement" (UTA) which includes the following:</p> <ul style="list-style-type: none"> (A) the names of the transferor and the transferee (which may be any individual or entity identified in TEC, §30.0015(b)); (B) the date of the transfer; (C) a description of the ATD being transferred; (D) the terms of the transfer (including the transfer of warranties, to the extent applicable); and (E) the signatures of authorized representatives of both the transferor and the transferee. <p>(c) The Texas Education Agency shall annually disseminate to school districts the standards for a school district's transfer of an ATD pursuant to TEC, §30.0015.</p> <p>(d) Nothing in this section or in TEC, §30.0015, shall:</p> <ul style="list-style-type: none"> (1) alter any existing obligation under federal or state law to provide ATDs to students with disabilities; (2) require a school district to transfer an ATD to any person or entity; (3) limit a school district's right to sell, lease, loan, or otherwise convey or dispose of property as authorized by federal or state laws, rules, or regulations; or (4) authorize any transfer of an ATD that is inconsistent with any restriction on transferability imposed by the manufacturer or developer of the ATD or applicable federal or state laws, rules, or regulations. <p>Last Amended: November 11, 2007, 32 TexReg 8129</p>	<p>attendance in the district or leaving the district.</p> <p>(b) The agency by rule shall develop and annually disseminate standards for a school district's transfer of an assistive technology device to an entity listed in this subsection when a student with a disability using the device changes the school of attendance in the district or ceases to attend school in the district that purchased the device and the student's parents, or the student if the student has the legal capacity to enter into a contract, agrees to the transfer. The device may be transferred to:</p> <ul style="list-style-type: none"> (1) the school or school district in which the student enrolls; (2) a state agency, including the Texas Rehabilitation Commission and the Texas Department of Mental Health and Mental Retardation, that provides services to the student following the student's graduation from high school; or (3) the student's parents, or the student if the student has the legal capacity to enter into a contract. <p>(c) The standards developed under this section must include:</p> <ul style="list-style-type: none"> (1) a uniform transfer agreement to convey title to an assistive technology device and applicable warranty information; (2) a method for computing the fair market value of an assistive technology device, including a reasonable allowance for use; and (3) a process to obtain written consent by the student's parents, or the student where appropriate, to the transfer. <p>(d) This section does not alter any existing obligation under federal or state law to provide assistive technology devices to students with disabilities.</p> <p>Last Amended: 76th Leg., ch. 682, Sec. 1, eff. June 18, 1999</p>
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<p>§ 300.106 Extended school year services.</p> <p>(a) <i>General.</i></p> <ol style="list-style-type: none"> (1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section. (2) Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with §§300.320 through 300.324, that the services are necessary for the provision of FAPE to the child. (3) In implementing the requirements of this section, a public agency may not— <ol style="list-style-type: none"> (i) Limit extended school year services to particular categories of disability; or (ii) Unilaterally limit the type, amount, or duration of those services. <p>(b) <i>Definition.</i> As used in this section, the term extended school year services means special education and related services that—</p> <ol style="list-style-type: none"> (1) Are provided to a child with a disability— <ol style="list-style-type: none"> (i) Beyond the normal school year of the public agency; (ii) In accordance with the child's IEP; and (iii) At no cost to the parents of the child; and (2) Meet the standards of the SEA. <p>(Authority: 20 U.S.C. 1412(a)(1)) Last Amended: 71 FR 46763, Aug. 14, 2006</p>	<p>§ 89.1065. Extended School Year Services.</p> <p>Extended school year (ESY) services are defined as individualized instructional programs beyond the regular school year for eligible students with disabilities.</p> <ol style="list-style-type: none"> (1) The need for ESY services must be determined on an individual student basis by the admission, review, and dismissal (ARD) committee in accordance with 34 Code of Federal Regulations (CFR), §300.106, and the provisions of this section. In determining the need for and in providing ESY services, a school district may not: <ol style="list-style-type: none"> (A) limit ESY services to particular categories of disability; or (B) unilaterally limit the type, amount, or duration of ESY services. (2) The need for ESY services must be documented from formal and/or informal evaluations provided by the district or the parents. The documentation must demonstrate that in one or more critical areas addressed in the current individualized education program (IEP) goals and objectives, the student has exhibited, or reasonably may be expected to exhibit, severe or substantial regression that cannot be recouped within a reasonable period of time. Severe or substantial regression means that the student has been, or will be, unable to maintain one or more acquired critical skills in the absence of ESY services. (3) The reasonable period of time for recoupment of acquired critical skills must be determined on the basis of needs identified in each student's IEP. If the loss of acquired critical skills would be particularly severe or substantial, or if such loss results, or reasonably may be expected to result, in immediate physical harm to the student or to others, ESY services may be justified without consideration of the period of time for recoupment of such skills. In any case, the period of time for recoupment must not exceed eight weeks. (4) A skill is critical when the loss of that skill results, or is reasonably expected to result, in any of the following occurrences during the first eight weeks of the next regular school year: <ol style="list-style-type: none"> (A) placement in a more restrictive instructional arrangement; (B) significant loss of acquired skills necessary for the student to appropriately progress in the general curriculum; (C) significant loss of self-sufficiency in self-help skill areas as evidenced by an increase in the number of direct service staff and/or amount of time required to provide special education or related services; (D) loss of access to community-based independent living skills instruction or an independent living environment provided by noneducational sources as a result of regression in skills; or 	
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<p>§ 300.107 Nonacademic services. The State must ensure the following:</p> <p>(a) Each public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.</p> <p>(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.</p> <p>(Authority: 20 U.S.C. 1412(a)(1)) Last Amended: 71 FR 46763, Aug. 14, 2006</p>	<p>(E) loss of access to on-the-job training or productive employment as a result of regression in skills.</p> <p>(5) If the district does not propose ESY services for discussion at the annual review of a student's IEP, the parent may request that the ARD committee discuss ESY services pursuant to 34 CFR, §300.321.</p> <p>(6) If a student for whom ESY services were considered and rejected loses critical skills because of the decision not to provide ESY services, and if those skills are not regained after the reasonable period of time for recoupment, the ARD committee must reconsider the current IEP if the student's loss of critical skills interferes with the implementation of the student's IEP.</p> <p>(7) For students enrolling in a district during the school year, information obtained from the prior school district as well as information collected during the current year may be used to determine the need for ESY services.</p> <p>(8) The provision of ESY services is limited to the educational needs of the student and must not supplant or limit the responsibility of other public agencies to continue to provide care and treatment services pursuant to policy or practice, even when those services are similar to, or the same as, the services addressed in the student's IEP. No student will be denied ESY services because the student receives care and treatment services under the auspices of other agencies.</p> <p>(9) Districts are not eligible for reimbursement for ESY services provided to students for reasons other than those set forth in this section.</p> <p>Last Amended: January 1, 2015, 39 TexReg 10446</p>	<p>§ 29.312. Psychological Counseling Services. Appropriate psychological counseling services for a student who is deaf or hard of hearing shall be made available at the student's school site in the student's primary mode of communication. In the case of a student who is hard of hearing, appropriate auditory systems to enhance oral communication shall be used if required by the student's admission, review, and dismissal committee. Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995</p> <p>§ 33.081. Extracurricular Activities. [Excerpt] . . .</p> <p>(c) A student who is enrolled in a school district in this state or who participates in a University Interscholastic League competition shall be suspended from participation in any extracurricular activity sponsored or sanctioned by the school district or the University Interscholastic League after a grade evaluation period in which the student received a grade lower than the equivalent of 70 on a scale of 100 in any academic class other than a course described by Subsection (d-1). A suspension continues for at least three school weeks and is not removed during the school year until the conditions of Subsection (d) are met. A suspension does not last beyond</p>
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<p>§ 300.108 Physical education. The State must ensure that public agencies in the State comply with the following:</p> <p>(a) <i>General.</i> Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the public agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.</p> <p>(b) <i>Regular physical education.</i> Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless—</p> <p>(1) The child is enrolled full time in a separate facility; or</p>	<p>§ 74.72. Minimum High School Program. [Excerpt] ...</p> <p>(b) Core courses. A student must demonstrate proficiency in the following. ...</p> <p>(6) Physical education--one credit. ...</p> <p>(F) A student who is unable to participate in physical activity due to disability or illness may substitute an academic elective credit (English language arts, mathematics, science, or social studies) for the physical education credit requirement. The</p>	<p>the end of a school year. For purposes of this subsection, "grade evaluation period" means:</p> <p>(1) the six-week grade reporting period; or</p> <p>(2) the first six weeks of a semester and each grade reporting period thereafter, in the case of a district with a grade reporting period longer than six weeks.</p> <p>...</p> <p>(d-1) Subsections (c) and (d) do not apply to an advanced placement or international baccalaureate course, or to an honors or dual credit course in the subject areas of English language arts, mathematics, science, social studies, economics, or a language other than English. The agency shall review on a biennial basis courses described by this subsection to determine if other courses should be excluded from the requirement that a student be suspended from participation in an extracurricular activity under Subsection (c). Not later than January 1 of each odd-numbered year, the agency shall report the findings under this subsection to the legislature.</p> <p>(e) Suspension of a student with a disability that significantly interferes with the student's ability to meet regular academic standards must be based on the student's failure to meet the requirements of the student's individualized education program. The determination of whether a disability significantly interferes with a student's ability to meet regular academic standards must be made by the student's admission, review, and dismissal committee. For purposes of this subsection, "student with a disability" means a student who is eligible for a district's special education program under Section 29.003(b).</p> <p>(f) A student suspended under this section may practice or rehearse with other students for an extracurricular activity but may not participate in a competition or other public performance.</p> <p>...</p> <p>Last Amended: 80th Leg., R.S., Ch. 1327 (S.B. 1517), Sec. 1, eff. June 15, 2007</p> <p>§ 28.002. Required Curriculum. [Excerpt] ...</p> <p>(d) The physical education curriculum required under Subsection (a)(2)(C) must be sequential, developmentally appropriate, and designed, implemented, and evaluated to enable students to develop the motor, self-management, and other skills, knowledge, attitudes, and confidence necessary to participate in physical activity throughout life. Each school district shall establish specific objectives and goals the district intends to accomplish through the physical education curriculum. In identifying the essential knowledge and skills of physical education, the State Board of Education shall ensure that the curriculum:</p> <p>...</p>
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<p>(2) The child needs specially designed physical education, as prescribed in the child's IEP.</p> <p>(c) <i>Special physical education.</i> If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs.</p> <p>(d) <i>Education in separate facilities.</i> The public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this section.</p> <p>(Authority: 20 U.S.C. 1412(a)(5)(A)) Last Amended: 71 FR 46764, Aug. 14, 2006</p>	<p>determination regarding a student's ability to participate in physical activity will be made by:</p> <p>(i) the student's admission, review, and dismissal (ARD) committee if the student receives special education services under the Texas Education Code (TEC), Chapter 29, Subchapter A;</p> <p>...</p> <p>(iii) a committee established by the school district of persons with appropriate knowledge regarding the student if each of the committees described by clauses (i) and (ii) of this subparagraph is inapplicable. This committee shall follow the same procedures required of an ARD or a Section 504 committee.</p> <p>...</p> <p>Last Amended: August 24, 2015, 40 TexReg 5329</p> <p>§ 74.73. Recommended High School Program. [Excerpt]</p> <p>...</p> <p>(b) Core courses. A student must demonstrate proficiency in the following:</p> <p>...</p> <p>(6) Physical education--one credit.</p> <p>...</p> <p>(G) A student who is unable to participate in physical activity due to disability or illness may substitute an academic elective credit (English language arts, mathematics, science, or social studies) for the physical education credit requirement. The determination regarding a student's ability to participate in physical activity will be made by:</p> <p>(i) the student's admission, review, and dismissal (ARD) committee if the student receives special education services under the Texas Education Code, Chapter 29, Subchapter A;</p> <p>...</p> <p>(iii) a committee established by the school district of persons with appropriate knowledge regarding the student if each of the committees described by clauses (i) and (ii) of this subparagraph is inapplicable. This committee shall follow the same procedures required of an ARD or a Section 504 committee.</p> <p>...</p> <p>Last Amended: August 24, 2015, 40 TexReg 5329</p>	<p>(6) meets the needs of students of all physical ability levels, including students who have a, chronic health problem, disability, including a student who is a person with a disability described under Section 29.003(b) or criteria developed by the agency in accordance with that section, or other special need that precludes the student from participating in regular physical education instruction but who might be able to participate in physical education that is suitably adapted and, if applicable, included in the student's individualized education program;</p> <p>...</p> <p>Last Amended: 84th Leg., R.S., Ch. 89 (H.B. 440), Sec. 1, eff. May 23, 2015 84th Leg., R.S., Ch. 729 (H.B. 1431), Sec. 1, eff. June 17, 2015 84th Leg., R.S., Ch. 1175 (S.B. 968), Sec. 1, eff. June 19, 2015</p> <p>§ 28.025. High School Diploma and Certificate; Academic Achievement Record. [Excerpt]</p> <p>...</p> <p>(b-11) In adopting rules under Subsection (b-1), the State Board of Education shall allow a student who is unable to participate in physical activity due to disability or illness to substitute one credit in English language arts, mathematics, science, or social studies, one credit in a course that is offered for credit as provided by Section 28.002(g-1), or one academic elective credit for the physical education credit required under Subsection (b-1)(8). A credit allowed to be substituted under this subsection may not also be used by the student to satisfy a graduation requirement other than completion of the physical education credit. The rules must provide that the determination regarding a student's ability to participate in physical activity will be made by:</p> <p>(1) if the student receives special education services under Subchapter A, Chapter 29, the student's admission, review, and dismissal committee;</p> <p>...</p> <p>Last Amended: 85th Leg., R.S., Ch. 1088 (H.B. 3593), Sec. 2, eff. June 15, 2017 85th Leg., R.S., Ch. 513 (S.B. 30), Sec. 3, eff. September 1, 2017 85th Leg., R.S., Ch. 549 (S.B. 463), Sec. 2, eff. June 9, 2017 85th Leg., R.S., Ch. 307 (S.B. 826), Sec. 1, eff. May 29, 2017</p>
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	<p>§ 74.74. Distinguished Achievement High School Program-- Advanced High School Program. [Excerpt]</p> <p>...</p> <p>(b) Core courses. A student must demonstrate proficiency in the following:</p> <p>...</p> <p>(6) Physical education--one credit.</p> <p>...</p> <p>(G) A student who is unable to participate in physical activity due to disability or illness may substitute an academic elective credit (English language arts, mathematics, science, or social studies) for the physical education credit requirement. The determination regarding a student's ability to participate in physical activity will be made by:</p> <p>(i) the student's admission, review, and dismissal (ARD) committee if the student receives special education services under the Texas Education Code (TEC), Chapter 29, Subchapter A;</p> <p>...</p> <p>(iii) a committee established by the school district of persons with appropriate knowledge regarding the student if each of the committees described by clauses (i) and (ii) of this subparagraph is inapplicable. This committee shall follow the same procedures required of an ARD or a Section 504 committee.</p> <p>...</p> <p>Last Amended: August 24, 2015, 40 TexReg 5329</p> <p>ss§ 74.1022. Foundation High School Program for Students Who Graduate in the 2013-2014 School Year. [Excerpt]</p> <p>...</p> <p>(d) Core courses. A student must demonstrate proficiency in the following.</p> <p>...</p> <p>(6) Physical education--one credit.</p> <p>...</p> <p>(F) A student who is unable to participate in physical activity due to disability or illness may substitute an academic elective credit (English language arts, mathematics, science, or social studies) for the physical education credit requirement. The determination regarding a student's ability to participate in physical activity will be made by:</p> <p>(i) the student's admission, review, and dismissal (ARD) committee if the student receives special education services under</p>	
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	<p>the Texas Education Code (TEC), Chapter 29, Subchapter A;</p> <p>...</p> <p>(iii) a committee established by the school district of persons with appropriate knowledge regarding the student if each of the committees described by clauses (i) and (ii) of this subparagraph is inapplicable. This committee shall follow the same procedures required of an ARD or a Section 504 committee.</p> <p>...</p> <p>Last Amended: December 16, 2013, 38 TexReg 9021</p> <p>§ 89.1131. Qualifications of Special Education, Related Service, and Paraprofessional Personnel. [Excerpt]</p> <p>...</p> <p>(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.</p> <p>...</p> <p>(5) The following provisions apply to physical education.</p> <p>(A) When the ARD committee has made the determination and the arrangements are specified in the student's individualized education program, physical education may be provided by the following personnel:</p> <p>(i) special education instructional or related service personnel who have the necessary skills and knowledge;</p> <p>(ii) physical education teachers;</p> <p>(iii) occupational therapists;</p> <p>(iv) physical therapists; or</p> <p>(v) occupational therapy assistants or physical therapy assistants working under supervision in accordance with the standards of their profession.</p> <p>(B) When these services are provided by special education personnel, the district must document that they have the necessary skills and knowledge. Documentation may include, but need not be limited to, inservice records, evidence of attendance at seminars or workshops, or transcripts of college courses.</p> <p>...</p> <p>Last Amended: January 1, 2015, 39 TexReg 10446</p>	
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<p>§ 300.109 Full educational opportunity goal (FEOG). The State must have in effect policies and procedures to demonstrate that the State has established a goal of providing full educational opportunity to all children with disabilities, aged birth through 21, and a detailed timetable for accomplishing that goal. (Authority: 20 U.S.C. 1412(a)(2)) Last Amended: 71 FR 46764, Aug. 14, 2006</p> <p>§ 300.110 Program options. The State must ensure that each public agency takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education. (Authority: 20 U.S.C. 1412(a)(2), 1413(a)(1)) Last Amended: 71 FR 46764, Aug. 14, 2006</p>	<p>§ 75.1023. Provisions for Individuals Who Are Members of Special Populations.</p> <p>(a) An individual who is a member of a special population as defined in 20 United States Code (USC), §2302(29), shall be provided career and technical education in accordance with all applicable federal law and regulations, state statutes, and rules of the State Board of Education (SBOE) and commissioner of education.</p> <p>(b) A student with a disability shall have access to career and technical education in accordance with the provisions of the Individuals with Disabilities Education Improvement Act (IDEA) of 2004, 20 USC, §§1400-1491o, and implementing regulations, state statutes, and rules of the SBOE and commissioner of education relating to services to students with disabilities.</p> <p>(c) A student with a disability shall be instructed in accordance with the student's individualized education program (IEP) in the least restrictive environment, as determined by the admission, review, and dismissal (ARD) committee. If a student is unable to receive a free appropriate public education (educational benefit) in a regular career and technical education program, using supplementary aids and services, the student may be served in separate programs designed to address the student's occupational/training needs, such as career and technical education for students with disabilities programs.</p> <p>(d) A student with a disability identified in accordance with provisions of Public Law 105-302 and the IDEA of 2004, 20 USC, §§1400-1491o, is an eligible participant in career and technical education when the requirements of this subsection are met.</p> <p>(1) The ARD committee shall include a representative from career and technical education, preferably the teacher, when considering initial or continued placement of a student in a career and technical education program. An ARD committee member, including a member described</p>	<p>§ 1.002. Equal Educational Services or Opportunities.</p> <p>(a) An educational institution undertaking to provide education, services, or activities to any individual within the jurisdiction or geographical boundaries of the educational institution shall provide equal opportunities to all individuals within its jurisdiction or geographical boundaries pursuant to this code.</p> <p>(b) An educational institution may not deny services to any individual eligible to participate in a school district's special education program as provided by Section 29.003, but the educational institution shall provide individuals with disabilities special educational services as authorized by law or, where expressly authorized, assist in and contribute toward the provision of appropriate special educational services in cooperation with other educational institutions and other appropriate agencies, institutions, or departments. Last amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995</p> <p>§ 29.001. Statewide Plan. [Excerpt] The agency shall 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 three and 21. The statewide design shall include the provision of services primarily through school districts and shared services arrangements, supplemented by regional education service centers. The agency shall also develop and implement a statewide plan with programmatic content that includes procedures designed to:</p> <p>...</p> <p>(8) ensure that, when appropriate, each student with a disability is provided an opportunity to participate in career and technology and physical education classes, in addition to participating in regular or special classes;</p> <p>...</p> <p>Last Amended: 84th Leg., R.S., Ch. 1192 (S.B. 1259), Sec. 1, eff. June 19, 2015</p>
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<p>§ 300.111 Child find.</p> <p>(a) <i>General.</i></p> <p>(1) The State must have in effect policies and procedures to ensure that—</p> <p>(i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and</p> <p>(ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.</p> <p>(b) <i>Use of term developmental delay.</i> The following provisions</p>	<p>in this subsection, is not required to attend an ARD committee meeting if the conditions of 34 Code of Federal Regulations (CFR), §300.321(e)(1), regarding attendance, or 34 CFR, §300.321(e)(2), regarding excusal, have been met.</p> <p>(2) Planning for students with disabilities shall be coordinated among career and technical education, special education, and state rehabilitation agencies and should include a coherent sequence of courses.</p> <p>(3) A school district shall monitor to determine if the instruction being provided students with disabilities in career and technical education classes is consistent with the IEP developed for a student.</p> <p>(4) A school district shall provide supplementary services that each student with a disability needs to successfully complete a career and technical education program such as curriculum modification, equipment modification, classroom modification, supportive personnel, and instructional aids and devices.</p> <p>(5) A school district shall help fulfill the transitional service requirements of the IDEA of 2004, 20 USC, §§1400-1491o, and implementing regulations, state statutes, and rules of the commissioner of education for each student with a disability who is completing a coherent sequence of career and technical education courses.</p> <p>(6) When determining placement in a career and technical education classroom, the ARD committee shall consider a student's graduation plan, the content of the IEP, including the consideration of transition services, and classroom supports. Enrollment numbers should not create a harmful effect on student learning for a student with or without disabilities in accordance with the provisions in the IDEA of 2004, 20 USC, §§1400-1491o, and its implementing regulations.</p> <p>Last Amended: July 12, 2012, 37 TexReg 5132</p> <p>§ 89.1011. Full and Individual Initial Evaluation. [Excerpt]</p> <p>(a) Referral of students for a full individual and initial evaluation for possible special education services must be a part of the district's overall, general education referral or screening system. Prior to referral, students experiencing difficulty in the general classroom should be considered for all support services available to all students, such as tutorial; remedial; compensatory; response to scientific, research-based intervention; and other academic or behavior support services. If the student continues to experience difficulty in the general classroom after the provision of interventions, district personnel must refer the student for a full individual and initial evaluation. This referral for a full individual and initial evaluation may be initiated by school personnel, the student's parents or legal guardian, or another person involved in the education or care of the student.</p>	<p>§ 26.0081. Right to Information Concerning Special Education and Education of Students with Learning Difficulties. [Excerpt]</p> <p>...</p> <p>(c) The agency shall produce and provide to school districts a written explanation of the options and requirements for providing assistance to students who have learning difficulties or who need or may need special education. The explanation must state that a parent is entitled at any time to request an evaluation of the parent's child for special education services under Section 29.004. Each school year, each district shall provide the written explanation to a parent of each district student by including the explanation in the student handbook or by another means.</p> <p>Last Amended: 78th Leg., ch. 539, Sec. 1, 2, eff. Sept. 1, 2003</p>
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apply with respect to implementing the child find requirements of this section:

- (1) A State that adopts a definition of *developmental delay* under §300.8(b) determines whether the term applies to children aged three through nine, or to a subset of that age range (e.g., ages three through five).
- (2) A State may not require an LEA to adopt and use the term *developmental delay* for any children within its jurisdiction.
- (3) If an LEA uses the term *developmental delay* for children described in §300.8(b), the LEA must conform to both the State's definition of that term and to the age range that has been adopted by the State.
- (4) If a State does not adopt the term *developmental delay*, an LEA may not independently use that term as a basis for establishing a child's eligibility under this part.

(c) *Other children in child find.* Child find also must include—

- (1) Children who are suspected of being a child with a disability under §300.8 and in need of special education, even though they are advancing from grade to grade; and
- (2) Highly mobile children, including migrant children.

(d) *Construction.* Nothing in the Act requires that children be classified by their disability so long as each child who has a disability that is listed in §300.8 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.

(Authority: 20 U.S.C. 1401(3)); 1412(a)(3))
 Last Amended: 71 FR 46764, Aug. 14, 2006

§ 300.112 Individualized education programs (IEP).
 The State must ensure that an IEP, or an IFSP that meets the requirements of section 636(d) of the Act, is developed, reviewed, and revised for each child with a disability in accordance with §§300.320 through 300.324, except as provided in §300.300(b)(3)(ii).
 (Authority: 20 U.S.C. 1412(a)(4))
 Last Amended: 71 FR 46764, Aug. 14, 2006

§ 300.113 Routine checking of hearing aids and external components of surgically implanted medical devices.

- (a) *Hearing aids.* Each public agency must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.
- (b) *External components of surgically implanted medical devices.*
 - (1) Subject to paragraph (b)(2) of this section, each public agency must ensure that the external components of

...
 Last Amended: January 1, 2015, 39 TexReg 10446

§ 89.1115. Memorandum of Understanding Concerning Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities. [Excerpt]

...
 (d) Terms of MOU. The parties agree to the following terms:

- (1) The responsibilities of LEAs and RFs related to the provision of a FAPE to students with disabilities who reside in RFs are established as follows:

...
 (B) Not later than the third day after the date a person 22 years of age or younger is placed in an RF, the RF must provide notification in accordance with TEC, §29.012(a), as follows:

- (i) if the person placed in the RF is three years of age or older, the RF must notify the LEA in which the RF is located, unless the RF is an open-enrollment charter school or the RF has been designated as an LEA (e.g., TYC correctional facilities, Texas School for the Deaf, the University of Texas Medical Branch); or
- (ii) if the person placed in the RF is younger than three years of age, the RF must notify a local early childhood intervention program in the area in which the RF is located.

...
 Last Amended: August 6, 2002, 27 TexReg 6851

§ 29.009. Public Notice Concerning Preschool Programs for Students with Disabilities.
 Each school district shall develop a system to notify the population in the district with children who are at least three years of age but younger than six years of age and who are eligible for enrollment in a special education program of the availability of the program.
 Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995

§ 29.012. Residential Facilities. [Excerpt]

- (a) Except as provided by Subsection (b)(2), not later than the third day after the date a person 22 years of age or younger is placed in a residential facility, the residential facility shall:
 - (1) if the person is three years of age or older, notify the school district in which the facility is located, unless the facility is an open-enrollment charter school; or
 - (2) if the person is younger than three years of age, notify a local early intervention program in the area in which the facility is located.

...
 Last Amended:
 85th Leg., R.S., Ch. 1026 (H.B. 1569), Sec. 1, eff. June 15, 2017
 85th Leg., R.S., Ch. 764 (S.B. 2080), Sec. 1, June 12, 2017

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<p>surgically implanted medical devices are functioning properly.</p> <p>(2) For a child with a surgically implanted medical device who is receiving special education and related services under this part, a public agency is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).</p> <p>(Authority: 20 U.S.C. 1401(1), 1401(26)(B)) Last Amended: 71 FR 46764, Aug. 14, 2006</p> <p>Least Restrictive Environment (LRE)</p> <p>§ 300.114 LRE requirements.</p> <p>(a) <i>General.</i></p> <p>(1) Except as provided in §300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and §§300.115 through 300.120.</p> <p>(2) Each public agency must ensure that—</p> <p>(i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and</p> <p>(ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.</p> <p>(b) <i>Additional requirement—State funding mechanism—</i></p> <p>(1) <i>General.</i></p> <p>(i) A State funding mechanism must not result in placements that violate the requirements of paragraph (a) of this section; and</p> <p>(ii) A State must not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability FAPE according to the unique needs of the child, as described in the child's IEP.</p> <p>(2) <i>Assurance.</i> If the State does not have policies and procedures to ensure compliance with paragraph (b)(1) of this section, the State must provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that the mechanism does not result in placements that violate</p>	<p>§ 75.1023. Provisions for Individuals Who Are Members of Special Populations. [Excerpt]</p> <p>...</p> <p>(c) A student with a disability shall be instructed in accordance with the student's individualized education program (IEP) in the least restrictive environment, as determined by the admission, review, and dismissal (ARD) committee. If a student is unable to receive a free appropriate public education (educational benefit) in a regular career and technical education program, using supplementary aids and services, the student may be served in separate programs designed to address the student's occupational/training needs, such as career and technical education for students with disabilities programs.</p> <p>...</p> <p>Last Amended: July 12, 2012, 37 TexReg 5132</p> <p>§ 89.1115. Memorandum of Understanding Concerning Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities. [Excerpt]</p> <p>...</p> <p>(d) Terms of MOU. The parties agree to the following terms:</p> <p>...</p> <p>(3) Criteria for determining when a public school will provide educational services are established as follows.</p> <p>(A) TEA will ensure that the local school district provides a FAPE to all eligible students with disabilities, in the least restrictive environment (LRE), to the maximum extent appropriate, to meet the individual educational needs of the student as determined by a duly-constituted admission, review, and dismissal (ARD) committee, and in accordance with §89.1001 of this title (relating to Scope and Applicability).</p> <p>(B) The student's ARD committee must determine the</p>	<p>§ 29.314. Transition Into Regular Class.</p> <p>In addition to satisfying requirements of the admission, review, and dismissal committee and to satisfying requirements under state and federal law for vocational training, each school district shall develop and implement a transition plan for the transition of a student who is deaf or hard of hearing into a regular class program if the student is to be transferred from a special class or center or nonpublic, nonsectarian school into a regular class in a public school for any part of the school day. The transition plan must provide for activities:</p> <p>(1) to integrate the student into the regular education program and specify the nature of each activity and the time spent on the activity each day; and</p> <p>(2) to support the transition of the student from the special education program into the regular education program.</p> <p>Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995</p>
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that paragraph.
 (Authority: 20 U.S.C. 1412(a)(5))
 Last Amended: 71 FR 46764, Aug. 14, 2006

§ 300.115 Continuum of alternative placements.

(a) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

(b) The continuum required in paragraph (a) of this section must—

(1) Include the alternative placements listed in the definition of special education under §300.39 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and

(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

(Authority: 20 U.S.C. 1412(a)(5))
 Last Amended: 82 FR 29759, June 30, 2017

appropriate educational placement for the student, considering all available information regarding the educational needs of the student, and including the non-educational needs that may restrict the ability of the LEA to serve the student on a public school campus or other instructional setting. These non-educational needs could include the student's health and safety (e.g. substance abuse), and/or the student's placement in a restrictive RF program (e.g., juvenile incarceration or restrictive court-ordered placements). The ARD committee's determination must be individualized based on student need and not made on a categorical basis, such as the student's disability or residence in an RF. Further, ARD committees must not determine educational placement on the basis of what is most convenient to LEAs or RFs.

(4) When educational services will be provided at an RF, appropriate educational space will be determined as follows.

(A) The ARD committee must determine whether space available at the RF is appropriate for the provision of a FAPE. This determination must be based on the individual student's needs and the RF's available space.

(B) An ARD committee must find alternative locations for providing educational services if the ARD committee or RF determines that the RF has no appropriate available space.

...

Last Amended: August 6, 2002, 27 TexReg 6851

§ 89.63. Instructional Arrangements and Settings.

(a) Each local school district shall be able to provide services with special education personnel to students with disabilities in order to meet the special needs of those students in accordance with 34 Code of Federal Regulations, §§300.114-300.118.

(b) Subject to §89.1075(e) of this title (relating to General Program Requirements and Local District Procedures) for the purpose of determining the student's instructional arrangement/setting, the regular school day is defined as the period of time determined appropriate by the admission, review, and dismissal (ARD) committee.

(c) Instructional arrangements/settings shall be based on the individual needs and the individualized education programs (IEPs) of eligible students receiving special education services and shall include the following.

(1) Mainstream. This instructional arrangement/setting is for providing special education and related services to a student in the regular classroom in accordance with the student's IEP. Qualified special education personnel must be involved in the implementation of the student's

§ 29.014. School Districts That Provide Education Solely to Students Confined to or Educated in Hospitals.

(a) This section applies only to a school district that provides education and related services only to students who are confined in or receive educational services in a hospital.

(b) A school district to which this section applies may operate an extended year program for a period not to exceed 45 days. The district's average daily attendance shall be computed for the regular school year plus the extended year.

(c) Notwithstanding any other provision of this code, a student whose appropriate education program is a regular education program may receive services and be counted for attendance purposes for the number of hours per week appropriate for the student's condition if the student:

(1) is temporarily classified as eligible for participation in a special education program because of the student's confinement in a hospital; and

(2) the student's education is provided by a district to which this section applies.

(d) The basic allotment for a student enrolled in a district to

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	<p>IEP through the provision of direct, indirect and/or support services to the student, and/or the student's regular classroom teacher(s) necessary to enrich the regular classroom and enable student success. The student's IEP must specify the services that will be provided by qualified special education personnel to enable the student to appropriately progress in the general education curriculum and/or appropriately advance in achieving the goals set out in the student's IEP. Examples of services provided in this instructional arrangement include, but are not limited to, direct instruction, helping teacher, team teaching, co-teaching, interpreter, education aides, curricular or instructional modifications/accommodations, special materials/equipment, positive classroom behavioral interventions and supports, consultation with the student and his/her regular classroom teacher(s) regarding the student's progress in regular education classes, staff development, and reduction of ratio of students to instructional staff.</p> <p>(2) Homebound. This instructional arrangement/setting is for providing special education and related services to students who are served at home or hospital bedside.</p> <p>(A) Students served on a homebound or hospital bedside basis are expected to be confined for a minimum of four consecutive weeks as documented by a physician licensed to practice in the United States. Homebound or hospital bedside instruction may, as provided by local district policy, also be provided to chronically ill students who are expected to be confined for any period of time totaling at least four weeks throughout the school year as documented by a physician licensed to practice in the United States. The student's ARD committee shall determine the amount of services to be provided to the student in this instructional arrangement/setting in accordance with federal and state laws, rules, and regulations, including the provisions specified in subsection (b) of this section.</p> <p>(B) Home instruction may also be used for services to infants and toddlers (birth through age 2) and young children (ages 3-5) when determined appropriate by the child's individualized family services plan (IFSP) committee or ARD committee. This arrangement/setting also applies to school districts described in Texas Education Code, §29.014.</p> <p>(3) Hospital class. This instructional arrangement/setting is for providing special education instruction in a classroom, in a hospital facility, or a residential care and treatment facility not operated by the school district. If the students residing in the facility are provided special education services outside the facility, they are considered to be served in the instructional arrangement in which they are placed and are not to be</p>	<p>which this section applies is adjusted by:</p> <ol style="list-style-type: none"> (1) the cost of education adjustment under Section 42.102 for the school district in which the district is geographically located; and (2) the weight for a homebound student under Section 42.151(a). <p>Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995</p> <p>§ 29.308. Regional Programs. Regional programs for students who are deaf or hard of hearing shall meet the unique communication needs of students who can benefit from those programs. Appropriate funding for those programs shall be consistent with federal and state law, and money appropriated to school districts for educational programs and services for students who are deaf or hard of hearing may not be allocated or used for any other program or service. Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995</p> <p>§ 30.021. Purpose of Texas School for the Blind and Visually Impaired. [Excerpt]</p> <p>(a) The Texas School for the Blind and Visually Impaired is a state agency established to serve as a special school in the continuum of statewide alternative placements for students who are 21 years of age or younger on September 1 of any school year and who have a visual impairment and who may have one or more other disabilities. The school is intended to serve students who require specialized or intensive educational or related services related to the visual impairment. The school is not intended to serve:</p> <ol style="list-style-type: none"> (1) students whose needs are appropriately addressed in a home or hospital setting or in a residential treatment facility; or (2) students whose primary, ongoing needs are related to a severe or profound emotional, behavioral, or cognitive deficit. <p>...</p> <p>Last Amended: 80th Leg., R.S., Ch. 1312 (S.B. 1031), Sec. 6, eff. September 1, 2007</p> <p>§ 30.051. Purpose of Texas School for the Deaf. [Excerpt]</p> <p>(a) The Texas School for the Deaf is a state agency established to provide educational services to persons who are 21 years of age or younger on September 1 of any school year and who are deaf or hard of hearing and who may have one or more other disabilities. The school shall provide comprehensive educational services, on a day or residential basis, and short-term services to allow a student to better achieve educational results from services available in the community. The school is not intended to serve:</p> <ol style="list-style-type: none"> (1) students whose needs are appropriately addressed in a home or hospital setting or a residential treatment
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	<p>considered as in a hospital class.</p> <p>(4) Speech therapy. This instructional arrangement/setting is for providing speech therapy services whether in a regular education classroom or in a setting other than a regular education classroom. When the only special education or related service provided to a student is speech therapy, then this instructional arrangement may not be combined with any other instructional arrangement.</p> <p>(5) Resource room/services. This instructional arrangement/setting is for providing special education and related services to a student in a setting other than regular education for less than 50% of the regular school day.</p> <p>(6) Self-contained (mild, moderate, or severe) regular campus. This instructional arrangement/setting is for providing special education and related services to a student who is in a self-contained program for 50% or more of the regular school day on a regular school campus.</p> <p>(7) Off-home campus. This instructional arrangement/setting is for providing special education and related services to the following, including, but not limited to, students at South Texas Independent School District and Windham Independent School District:</p> <p>(A) a student who is one of a group of students from more than one school district served in a single location when a free appropriate public education is not available in the respective sending district;</p> <p>(B) a student in a community setting or environment (not operated by a school district) that prepares the student for postsecondary education/training, integrated employment, and/or independent living in coordination with the student's individual transition goals and objectives, including a student with regularly scheduled instruction or direct involvement provided by school district personnel, or a student in a facility not operated by a school district (other than a nonpublic day school) with instruction provided by school district personnel; or</p> <p>(C) a student in a self-contained program at a separate campus operated by the school district that provides only special education and related services.</p> <p>(8) Nonpublic day school. This instructional arrangement/setting is for providing special education and related services to students through a contractual agreement with a nonpublic school for special education.</p> <p>(9) Vocational adjustment class/program. This instructional arrangement/setting is for providing special education and related services to a student who is placed on a job (paid or unpaid unless otherwise prohibited by law) with regularly scheduled direct involvement by special</p>	<p>facility; or</p> <p>(2) students whose primary, ongoing needs are related to a severe or profound emotional, behavioral, or cognitive deficit.</p> <p>...</p> <p>Last Amended: 79th Leg., 3rd C.S., Ch. 5 (H.B. 1), Sec. 7.01, eff. May 31, 2006</p>
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	<p>education personnel in the implementation of the student's IEP. This instructional arrangement/setting shall be used in conjunction with the student's individual transition goals and only after the school district's career and technical education classes have been considered and determined inappropriate for the student.</p> <p>(10) Residential care and treatment facility (not school district resident). This instructional arrangement/setting is for providing special education instruction and related services to students who reside in care and treatment facilities and whose parents do not reside within the boundaries of the school district providing educational services to the students. In order to be considered in this arrangement, the services must be provided on a school district campus. If the instruction is provided at the facility, rather than on a school district campus, the instructional arrangement is considered to be the hospital class arrangement/setting rather than this instructional arrangement. Students with disabilities who reside in these facilities may be included in the average daily attendance of the district in the same way as all other students receiving special education.</p> <p>(11) State supported living center. This instructional arrangement/setting is for providing special education and related services to a student who resides at a state supported living center when the services are provided at the state supported living center location. If services are provided on a local school district campus, the student is considered to be served in the residential care and treatment facility arrangement/setting.</p> <p>(d) The appropriate instructional arrangement for students from birth through the age of two with visual and/or auditory impairments shall be determined in accordance with the IFSP, current attendance guidelines, and the agreement memorandum between the Texas Education Agency (TEA) and the Department of Assistive and Rehabilitative Services (DARS) Early Childhood Intervention (ECI) Services.</p> <p>(e) For nonpublic day school placements, the school district or shared service arrangement shall submit information to the TEA indicating the students' identification numbers, initial dates of placement, and the names of the facilities with which the school district or shared service arrangement is contracting. The school district or shared service arrangement shall not count contract students' average daily attendance as eligible. The TEA shall determine the number of contract students reported in full-time equivalents and pay state funds to the district according to the formula prescribed in law.</p> <p>(f) Other program options which may be considered for the delivery of special education and related services to a student may include the following:</p> <ol style="list-style-type: none"> (1) contracts with other school districts; and (2) other program options as approved by the TEA. 	
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<p>§ 300.116 Placements. In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that—</p> <p>(a) The placement decision—</p> <p>(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and</p> <p>(2) Is made in conformity with the LRE provisions of this subpart, including §§300.114 through 300.118;</p> <p>(b) The child's placement—</p> <p>(1) Is determined at least annually;</p> <p>(2) Is based on the child's IEP; and</p> <p>(3) Is as close as possible to the child's home;</p> <p>(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;</p> <p>(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and</p> <p>(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.</p> <p>(Authority: 20 U.S.C. 1412(a)(5)) Last Amended: 71 FR 46765, Aug. 14, 2006</p>	<p>Last Amended: January 1, 2015, 39 TexReg 10443</p> <p>§ 75.1023. Provisions for Individuals Who Are Members of Special Populations. [Excerpt]</p> <p>...</p> <p>(d) A student with a disability identified in accordance with provisions of Public Law 105-302 and the IDEA of 2004, 20 USC, §§1400-1491o, is an eligible participant in career and technical education when the requirements of this subsection are met.</p> <p>...</p> <p>(6) When determining placement in a career and technical education classroom, the ARD committee shall consider a student's graduation plan, the content of the IEP, including the consideration of transition services, and classroom supports. Enrollment numbers should not create a harmful effect on student learning for a student with or without disabilities in accordance with the provisions in the IDEA of 2004, 20 USC, §§1400-1491o, and its implementing regulations.</p> <p>Last Amended: July 12, 2012, 37 TexReg 5132</p> <p>§ 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 has a hearing impairment which severely impairs processing linguistic information through hearing, even with recommended amplification, and 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.</p> <p>Last Amended: September 1, 1996, 21 TexReg 7240</p> <p>§ 89.1085. Referral for the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf Services. [Excerpt]</p> <p>(a) A student's admission, review, and dismissal (ARD) committee may place the student at the Texas School for the Blind and Visually Impaired (TSBVI) or the Texas School for the Deaf (TSD) in accordance with the provisions of 34 Code of Federal Regulations (CFR), Part 300, the Texas Education Code (TEC), including, specifically, §§30.021, 30.051, and 30.057, and the applicable rules of this subchapter.</p> <p>...</p> <p>(c) When a student's ARD committee places the student at the TSBVI or the TSD, the student's resident school district shall comply with the following requirements.</p>	<p>§ 29.008. Contracts for Services; Residential Placement. [Excerpt]</p> <p>...</p> <p>(d) A district that contracts for the provision of education services rather than providing the services itself shall oversee the implementation of the student's individualized education program and shall annually reevaluate the appropriateness of the arrangement. An approved facility, institution, or agency with whom the district contracts shall periodically report to the district on the services the student has received or will receive in accordance with the contract as well as diagnostic or other evaluative information that the district requires in order to fulfill its obligations under this subchapter.</p> <p>Last Amended: 75th Leg., ch. 1071, Sec. 3, eff. Sept. 1, 1997</p> <p>§ 29.305. Language Mode Peers. If practicable and not in conflict with any admission, review, and dismissal committee recommendations, a student who is deaf or hard of hearing must have an education in the company of a sufficient number of peers using the same language mode and with whom the student can communicate directly. If practicable, the peers must be of the same or approximately the same age and ability.</p> <p>Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995</p> <p>§ 29.307. Role Models. A student who is deaf or hard of hearing shall be given the opportunity to be exposed to deaf or hard-of-hearing role models.</p> <p>Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995</p> <p>§ 30.002. Education for Children With Visual Impairments. [Excerpt]</p> <p>...</p> <p>(c) The comprehensive statewide plan for the education of children with visual impairments must:</p> <p>...</p> <p>(3) emphasize providing educational services to children with visual impairments in their home communities whenever possible;</p> <p>...</p> <p>Last Amended: 83rd Leg., R.S., Ch. 505 (S.B. 39), Sec. 1, eff. June 14, 2013 83rd Leg., R.S., Ch. 637 (H.B. 591), Sec. 1, eff. September 1, 2013</p>
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	<p>...</p> <p>(2) The district may make an on-site visit to verify that the TSBVI or the TSD can and will offer the services listed in the individual student's IEP and to ensure that the school offers an appropriate educational program for the student.</p> <p>...</p> <p>Last Amended: November 11, 2007, 32 TexReg 8129</p> <p>§ 89.1115. Memorandum of Understanding Concerning Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities. [Excerpt]</p> <p>...</p> <p>(d) Terms of MOU. The parties agree to the following terms:</p> <p>...</p> <p>(3) Criteria for determining when a public school will provide educational services are established as follows.</p> <p>(A) TEA will ensure that the local school district provides a FAPE to all eligible students with disabilities, in the least restrictive environment (LRE), to the maximum extent appropriate, to meet the individual educational needs of the student as determined by a duly-constituted admission, review, and dismissal (ARD) committee, and in accordance with §89.1001 of this title (relating to Scope and Applicability).</p> <p>(B) The student's ARD committee must determine the appropriate educational placement for the student, considering all available information regarding the educational needs of the student, and including the non-educational needs that may restrict the ability of the LEA to serve the student on a public school campus or other instructional setting. These non-educational needs could include the student's health and safety (e.g. substance abuse), and/or the student's placement in a restrictive RF program (e.g., juvenile incarceration or restrictive court-ordered placements). The ARD committee's determination must be individualized based on student need and not made on a categorical basis, such as the student's disability or residence in an RF. Further, ARD committees must not determine educational placement on the basis of what is most convenient to LEAs or RFs.</p> <p>(4) When educational services will be provided at an RF, appropriate educational space will be determined as follows.</p> <p>(A) The ARD committee must determine whether space available at the RF is appropriate for the provision of a FAPE. This determination must be based on the individual student's needs and the RF's available space.</p>	<p>§ 30.083. Statewide Plan. [Excerpt]</p> <p>(a) The director of services shall develop and administer a comprehensive statewide plan for educational services for students who are deaf or hard of hearing, including continuing diagnosis and evaluation, counseling, and teaching. The plan shall be designed to accomplish the following objectives:</p> <p>(1) providing assistance and counseling to parents of students who are deaf or hard of hearing in regional day school programs for the deaf and admitting to the programs students who have a hearing loss that interferes with the processing of linguistic information;</p> <p>(2) enabling students who are deaf or hard of hearing to reside with their parents or guardians and be provided an appropriate education in their home school districts or in regional day school programs for the deaf;</p> <p>(3) enabling students who are deaf or hard of hearing who are unable to attend schools at their place of residence and whose parents or guardians live too far from facilities of regional day school programs for the deaf for daily commuting to be accommodated in foster homes or other residential school facilities provided for by the agency so that those children may attend a regional day school program for the deaf;</p> <p>(4) enrolling in the Texas School for the Deaf those students who are deaf or hard of hearing whose needs can best be met in that school and designating the Texas School for the Deaf as the statewide educational resource for students who are deaf or hard of hearing;</p> <p>(5) encouraging students in regional day school programs for the deaf to attend general education classes on a part-time, full-time, or trial basis; and</p> <p>(6) recognizing the need for development of language and communications abilities in students who are deaf or hard of hearing, but also calling for the use of methods of communication that will meet the needs of each individual student, with each student assessed thoroughly so as to ascertain the student's potential for communications through a variety of means, including through oral or aural means, fingerspelling, or sign language.</p> <p>...</p> <p>Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995</p>
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<p>§ 300.117 Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in §300.107, each public agency must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings. (Authority: 20 U.S.C. 1412(a)(5)) Last Amended: 71 FR 46765, Aug. 14, 2006</p> <p>§ 300.118 Children in public or private institutions. Except as provided in §300.149(d) (regarding agency responsibility for general supervision of some individuals in adult prisons), an SEA must ensure that §300.114 is effectively implemented, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures). (Authority: 20 U.S.C. 1412(a)(5)) Last Amended: 72 FR 61306, Oct. 30, 2007</p> <p>§ 300.119 Technical assistance and training activities. Each SEA must carry out activities to ensure that teachers and administrators in all public agencies— (a) Are fully informed about their responsibilities for implementing §300.114; and (b) Are provided with technical assistance and training</p>	<p>(B) An ARD committee must find alternative locations for providing educational services if the ARD committee or RF determines that the RF has no appropriate available space. ... Last Amended: August 6, 2002, 27 TexReg 6851</p> <p>§ 89.1115. Memorandum of Understanding Concerning Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities. [Excerpt] ... (d) Terms of MOU. The parties agree to the following terms: ... (5) Measures designed to ensure the safety of students and teachers are established as follows. (A) The parties will require RFs and LEAs to agree in writing to the staffing levels that will be maintained by both the RF and the LEA to ensure the safety of students and teachers while educational services are provided at an RF. (B) TYC, TJPC, and HHS agencies will require RFs to communicate to LEA staff applicable safety, emergency, and security procedures to be followed while educational services are provided at an RF. ... Last Amended: August 6, 2002, 27 TexReg 6851</p> <p>§ 89.1141. Education Service Center Regional Special Education Leadership. [Excerpt] (a) Each regional education service center (ESC) will provide leadership, training, and technical assistance in the area of special education for students with disabilities in accordance with the Texas Education Agency's (TEA) focus on increasing student achievement and Texas Education Code (TEC),</p>	
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<p>necessary to assist them in this effort. (Authority: 20 U.S.C. 1412(a)(5)) Last Amended: 71 FR 46765, Aug. 14, 2006</p> <p>§ 300.120 Monitoring activities.</p> <p>(a) The SEA must carry out activities to ensure that §300.114 is implemented by each public agency.</p> <p>(b) If there is evidence that a public agency makes placements that are inconsistent with §300.114, the SEA must—</p> <ol style="list-style-type: none"> (1) Review the public agency's justification for its actions; and (2) Assist in planning and implementing any necessary corrective action. <p>(Authority: 20 U.S.C. 1412(a)(5)) Last Amended: 71 FR 46765, Aug. 14, 2006</p>	<p>§8.051(d)(2) and (5), and will assist TEA in the implementation of 34 Code of Federal Regulations (CFR) §300.119.</p> <p>(b) Each regional ESC will provide technical assistance, support, and training in the area of special education to school districts based on the results of a comprehensive needs assessment process. Each regional ESC will continue to serve as first point of contact for school districts, parents, and other community stakeholders, and will provide for the joint training of parents and special education, related services, and general education personnel.</p> <p>(c) Regional ESC activities and responsibilities will be in accordance with current instructions, program guidelines, and program descriptions included in the ESC Performance Contract and Application, which will be made accessible to the public through the TEA website.</p> <p>(d) The ESC must utilize available TEA funding to implement activities and address needs identified under subsections (a)-(c) of this section. If additional funding is needed to implement supplementary or enhanced activities identified through the regional needs assessment process, ESCs may access and utilize alternate sources of funding. Any charges must be determined only after priorities have been established through input from affected school districts, including data collected from parents and communities through partnerships with school districts.</p> <p>(e) When an ESC provides leadership, training, and support pertaining to education and related services for students with visual impairments, directly or through contract, the personnel providing such services must be appropriately certified as identified in current program guidelines included in the ESC Performance Contract and Application, regardless of the fund source used to fund the service/personnel.</p> <p>(f) Regional ESCs may serve as fiscal agent for shared services arrangements in accordance with procedures established under §89.1075(e) of this title (relating to General Program Requirements and Local District Procedures).</p> <p>...</p> <p>Last Amended: November 11, 2007, 32 TexReg 8129</p>	<p>§ 29.010. Compliance. [Excerpt]</p> <p>(a) The agency shall adopt and implement a comprehensive system for monitoring school district compliance with federal and state laws relating to special education. The monitoring system must provide for ongoing analysis of district special education data and of complaints filed with the agency concerning special education services and for inspections of school districts at district facilities. The agency shall use the information obtained through analysis of district data and from the complaints management system to determine the appropriate schedule for and extent of the inspection.</p> <p>...</p>
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<p>Additional Eligibility Requirements</p> <p>§ 300.121 Procedural safeguards.</p> <p>(a) <i>General.</i> The State must have procedural safeguards in effect to ensure that each public agency in the State meets the requirements of §§300.500 through 300.536.</p> <p>(b) <i>Procedural safeguards identified.</i> Children with disabilities and their parents must be afforded the procedural safeguards identified in paragraph (a) of this section.</p> <p>(Authority: 20 U.S.C. 1412(a)(6)(A)) Last Amended: 71 FR 46765, Aug. 14, 2006</p> <p>§ 300.122 Evaluation.</p> <p>Children with disabilities must be evaluated in accordance with §§300.300 through 300.311 of subpart D of this part.</p> <p>(Authority: 20 U.S.C. 1412(a)(7)) Last Amended: 71 FR 46765, Aug. 14, 2006</p> <p>§ 300.123 Confidentiality of personally identifiable information.</p> <p>The State must have policies and procedures in effect to ensure that public agencies in the State comply with §§300.610 through 300.626 related to protecting the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the Act.</p> <p>(Authority: 20 U.S.C. 1412(a)(8); 1417(c)) Last Amended: 71 FR 46765, Aug. 14, 2006</p> <p>§ 300.124 Transition of children from the Part C program to preschool programs.</p> <p>The State must have in effect policies and procedures to ensure that—</p> <p>(a) Children participating in early intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9) of the Act;</p> <p>(b) By the third birthday of a child described in paragraph (a) of this section, an IEP or, if consistent with §300.323(b) and section 636(d) of the Act, an IFSP, has been developed and is being implemented for the child consistent with §300.101(b); and</p> <p>(c) Each affected LEA will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10) of the Act.</p>		<p>Last Amended: 76th Leg., ch. 1417, Sec. 1, eff. June 19, 1999</p> <p>§ 28.058. Confidentiality.</p> <p>All information regarding an individual student received by the commissioner under this subchapter from a school district or student is confidential under Chapter 552, Government Code.</p> <p>Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995</p>
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<p>(Authority: 20 U.S.C. 1412(a)(9)) Last Amended: 71 FR 46766, Aug. 14, 2006</p> <p>§§ 300.125–300.128 [Reserved]</p> <p>Children in Private Schools</p> <p>§ 300.129 State responsibility regarding children in private schools. The State must have in effect policies and procedures that ensure that LEAs, and, if applicable, the SEA, meet the private school requirements in §§300.130 through 300.148. (Authority: 20 U.S.C. 1412(a)(10)) Last Amended: 71 FR 46766, Aug. 14, 2006</p> <p>Children With Disabilities Enrolled by Their Parents in Private Schools</p> <p>§ 300.130 Definition of parentally-placed private school children with disabilities. <i>Parentally-placed private school children with disabilities</i> means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in §300.13 or secondary school in §300.36, other than children with disabilities covered under §§300.145 through 300.147. (Authority: 20 U.S.C. 1412(a)(10)(A)) Last Amended: 71 FR 46766, Aug. 14, 2006</p>	<p>§ 89.1096. Provision of Services for Students Placed by their Parents in Private Schools or Facilities. [Excerpt]</p> <p>(a) 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 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.</p> <p>(1) For purposes of 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:</p> <p>(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</p> <p>(B) 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.</p> <p>(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.</p> <p>...</p>	
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<p>§ 300.131 Child find for parentally-placed private school children with disabilities.</p> <p>(a) <i>General.</i> Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, in accordance with paragraphs (b) through (e) of this section, and §§300.111 and 300.201.</p> <p>(b) <i>Child find design.</i> The child find process must be designed to ensure—</p> <p>(1) The equitable participation of parentally-placed private school children; and</p> <p>(2) An accurate count of those children.</p> <p>(c) <i>Activities.</i> In carrying out the requirements of this section, the LEA, or, if applicable, the SEA, must undertake activities similar to the activities undertaken for the agency's public school children.</p> <p>(d) <i>Cost.</i> The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if an LEA has met its obligation under §300.133.</p> <p>(e) <i>Completion period.</i> The child find process must be completed in a time period comparable to that for students attending public schools in the LEA consistent with §300.301.</p> <p>(f) <i>Out-of-State children.</i> Each LEA in which private, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located.</p> <p>(Authority: 20 U.S.C. 1412(a)(10)(A)(ii)) Last Amended: 71 FR 46766, Aug. 14, 2006</p>	<p>Last Amended: November 11, 2007, 32 TexReg 8129</p> <p>§ 89.1096. Provision of Services for Students Placed by their Parents in Private Schools or Facilities. [Excerpt]</p> <p>...</p> <p>(b) When a student with a disability 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 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, the district is not responsible for providing educational services to the student, except as provided in 34 CFR, §§300.130-300.144, or subsection (e) of this section, until such time as the parents choose to enroll the student in public school full time.</p> <p>...</p> <p>Last Amended: November 11, 2007, 32 TexReg 8129</p>	
<p>§ 300.132 Provision of services for parentally-placed private school children with disabilities—basic requirement.</p> <p>(a) <i>General.</i> To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services determined in accordance with §300.137, unless the Secretary has arranged for services to those children under the by-pass provisions in §§300.190 through 300.198.</p> <p>(b) <i>Services plan for parentally-placed private school children with disabilities.</i> In accordance with paragraph (a) of this section and §§300.137 through 300.139, a services plan</p>	<p>§ 89.1096. Provision of Services for Students Placed by their Parents in Private Schools or Facilities. [Excerpt]</p> <p>...</p> <p>(d) Parents of an eligible student ages 3 or 4 who decline dual enrollment for their student may request a services plan as described in 34 CFR, §§300.130-300.144. The public school district where the private school is located is responsible for the development of a services plan, if the student is designated to receive services under 34 CFR, §300.132.</p> <p>...</p> <p>Last Amended: November 11, 2007, 32 TexReg 8129</p>	

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<p>must be developed and implemented for each private school child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services under this part.</p> <p>(c) <i>Record keeping.</i> Each LEA must maintain in its records, and provide to the SEA, the following information related to parentally-placed private school children covered under §§300.130 through 300.144:</p> <ol style="list-style-type: none"> (1) The number of children evaluated; (2) The number of children determined to be children with disabilities; and (3) The number of children served. <p>(Authority: 20 U.S.C. 1412(a)(10)(A)(i)) Last Amended: 71 FR 46766, Aug. 14, 2006</p> <p>§ 300.133 Expenditures.</p> <p>(a) <i>Formula.</i> To meet the requirement of §300.132(a), each LEA must spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities:</p> <ol style="list-style-type: none"> (1) For children aged 3 through 21, an amount that is the same proportion of the LEA's total subgrant under section 611(f) of the Act as the number of private school children with disabilities aged 3 through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged 3 through 21. (2) (i) For children aged three through five, an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in a private, including religious, elementary school located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three through five. (ii) As described in paragraph (a)(2)(i) of this section, children aged three through five are considered to be parentally-placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school in §300.13. (3) If an LEA has not expended for equitable services all of the funds described in paragraphs (a)(1) and (a)(2) of this section by the end of the fiscal year for which Congress appropriated the funds, the LEA must obligate the remaining funds for special education and related services (including direct services) to parentally- 		
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<p>placed private school children with disabilities during a carry-over period of one additional year.</p> <p>(b) <i>Calculating proportionate amount.</i> In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, the LEA, after timely and meaningful consultation with representatives of private schools under § 300.134, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the LEA. (See appendix B for an example of how proportionate share is calculated).</p> <p>(c) <i>Annual count of the number of parentally-placed private school children with disabilities.</i></p> <p>(1) Each LEA must—</p> <p>(i) After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities (consistent with §300.134), determine the number of parentally-placed private school children with disabilities attending private schools located in the LEA; and</p> <p>(ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.</p> <p>(2) The count must be used to determine the amount that the LEA must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year.</p> <p>(d) <i>Supplement, not supplant.</i> State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities under this part.</p> <p>(Authority: 20 U.S.C. 1412(a)(10)(A)) Last Amended: 71 FR 46766, Aug. 14, 2006</p> <p>§ 300.134 Consultation.</p> <p>To ensure timely and meaningful consultation, an LEA, or, if appropriate, an SEA, must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:</p> <p>(a) Child find. The child find process, including—</p> <p>(1) How parentally-placed private school children suspected of having a disability can participate equitably; and</p> <p>(2) How parents, teachers, and private school officials will be informed of the process.</p> <p>(b) <i>Proportionate share of funds.</i> The determination of the</p>		
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<p>proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under §300.133(b), including the determination of how the proportionate share of those funds was calculated.</p> <p>(c) <i>Consultation process.</i> The consultation process among the LEA, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.</p> <p>(d) <i>Provision of special education and related services.</i> How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of—</p> <ol style="list-style-type: none"> (1) The types of services, including direct services and alternate service delivery mechanisms; and (2) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and (3) How and when those decisions will be made; <p>(e) <i>Written explanation by LEA regarding services.</i> How, if the LEA disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract), the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.</p> <p>(Authority: 20 U.S.C. 1412(a)(10)(A)(iii)) Last Amended: 71 FR 46767, Aug. 14, 2006</p> <p>§ 300.135 Written affirmation.</p> <p>(a) When timely and meaningful consultation, as required by §300.134, has occurred, the LEA must obtain a written affirmation signed by the representatives of participating private schools.</p> <p>(b) If the representatives do not provide the affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the SEA.</p> <p>(Authority: 20 U.S.C. 1412(a)(10)(A)(iv)) Last Amended: 71 FR 46767, Aug. 14, 2006</p> <p>§ 300.136 Compliance.</p> <p>(a) <i>General.</i> A private school official has the right to submit a complaint to the SEA that the LEA—</p> <ol style="list-style-type: none"> (1) Did not engage in consultation that was meaningful and timely; or (2) Did not give due consideration to the views of the private school official. 		
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<p>(b) <i>Procedure.</i></p> <ul style="list-style-type: none"> (1) If the private school official wishes to submit a complaint, the official must provide to the SEA the basis of the noncompliance by the LEA with the applicable private school provisions in this part; and (2) The LEA must forward the appropriate documentation to the SEA. (3) (i) If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary by providing the information on noncompliance described in paragraph (b)(1) of this section; and (ii) The SEA must forward the appropriate documentation to the Secretary. <p>(Authority: 20 U.S.C. 1412(a)(10)(A)(v)) Last Amended: 71 FR 46767, Aug. 14, 2006</p> <p>§ 300.137 Equitable services determined.</p> <p>(a) <i>No individual right to special education and related services.</i> No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.</p> <p>(b) <i>Decisions.</i></p> <ul style="list-style-type: none"> (1) Decisions about the services that will be provided to parentally-placed private school children with disabilities under §§300.130 through 300.144 must be made in accordance with paragraph (c) of this section and §300.134(d). (2) The LEA must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities. <p>(c) <i>Services plan for each child served under §§300.130 through 300.144.</i> If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from an LEA, the LEA must—</p> <ul style="list-style-type: none"> (1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with §300.138(b); and (2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls. <p>(Authority: 20 U.S.C. 1412(a)(10)(A)) Last Amended: 72 FR 61306, Oct. 30, 2007</p>	<p>§ 89.1096. Provision of Services for Students Placed by their Parents in Private Schools or Facilities. [Excerpt]</p> <p>(a) 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 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.</p> <ul style="list-style-type: none"> (1) For purposes of 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: <ul style="list-style-type: none"> (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) 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. <p>...</p> <p>(d) Parents of an eligible student ages 3 or 4 who decline dual enrollment for their student may request a services plan as described in 34 CFR, §§300.130-300.144. The public school district where the private school is located is responsible for</p>	
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<p>§ 300.138 Equitable services provided.</p> <p>(a) <i>General.</i></p> <p>(1) The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the special education teacher qualification requirements in § 300.156(c).</p> <p>(2) Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.</p> <p>(b) <i>Services provided in accordance with a services plan.</i></p> <p>(1) Each parentally-placed private school child with a disability who has been designated to receive services under §300.132 must have a services plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined, through the process described in §§300.134 and 300.137, it will make available to parentally-placed private school children with disabilities.</p> <p>(2) The services plan must, to the extent appropriate—</p> <p>(i) Meet the requirements of §300.320, or for a child ages three through five, meet the requirements of §300.323(b) with respect to the services provided; and</p> <p>(ii) Be developed, reviewed, and revised consistent with §§300.321 through 300.324.</p> <p>(c) <i>Provision of equitable services.</i></p> <p>(1) The provision of services pursuant to this section and §§300.139 through 300.143 must be provided:</p> <p>(i) By employees of a public agency; or</p> <p>(ii) Through contract by the public agency with an individual, association, agency, organization, or other entity.</p> <p>(2) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.</p> <p>(Authority: 20 U.S.C. 1412(a)(10)(A)(vi)) Last Amended: 82 FR 29759, June 30, 2017</p>	<p>the development of a services plan, if the student is designated to receive services under 34 CFR, §300.132.</p> <p>...</p> <p>Last Amended: November 11, 2007, 32 TexReg 8129</p>	
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§ 300.139 Location of services and transportation.

- (a) *Services on private school premises.* Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.
- (b) *Transportation—*
 - (1) *General.*
 - (i) If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation—
 - (A) From the child's school or the child's home to a site other than the private school; and
 - (B) From the service site to the private school, or to the child's home, depending on the timing of the services.
 - (ii) LEAs are not required to provide transportation from the child's home to the private school.
 - (2) *Cost of transportation.* The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the LEA has met the requirement of §300.133.

(Authority: 20 U.S.C. 1412(a)(10)(A))
 Last Amended: 71 FR 46768, Aug. 14, 2006

§ 300.140 Due process complaints and State complaints.

- (a) *Due process not applicable, except for child find.*
 - (1) Except as provided in paragraph (b) of this section, the procedures in §§300.504 through 300.519 do not apply to complaints that an LEA has failed to meet the requirements of §§300.132 through 300.139, including the provision of services indicated on the child's services plan.
- (b) *Child find complaints—to be filed with the LEA in which the private school is located.*
 - (1) The procedures in §§300.504 through 300.519 apply to complaints that an LEA has failed to meet the child find requirements in §300.131, including the requirements in §§300.300 through 300.311.
 - (2) Any due process complaint regarding the child find requirements (as described in paragraph (b)(1) of this section) must be filed with the LEA in which the private school is located and a copy must be forwarded to the SEA.
- (c) *State complaints.*
 - (1) Any complaint that an SEA or LEA has failed to meet the requirements in §§300.132 through 300.135 and 300.137 through 300.144 must be filed in accordance with the procedures described in §§300.151 through

§ 89.1096. Provision of Services for Students Placed by their Parents in Private Schools or Facilities. [Excerpt]

- ...
- (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 (c) 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 (c).

Last Amended: November 11, 2007, 32 TexReg 8129

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<p>300.153.</p> <p>(2) A complaint filed by a private school official under §300.136(a) must be filed with the SEA in accordance with the procedures in §300.136(b).</p> <p>(Authority: 20 U.S.C. 1412(a)(10)(A)) Last Amended: 71 FR 46768, Aug. 14, 2006</p> <p>§ 300.141 Requirement that funds not benefit a private school.</p> <p>(a) An LEA may not use funds provided under section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school.</p> <p>(b) The LEA must use funds provided under Part B of the Act to meet the special education and related services needs of parentally-placed private school children with disabilities, but not for meeting—</p> <p>(1) The needs of a private school; or</p> <p>(2) The general needs of the students enrolled in the private school.</p> <p>(Authority: 20 U.S.C. 1412(a)(10)(A)) Last Amended: 71 FR 46768, Aug. 14, 2006</p> <p>§ 300.142 Use of personnel.</p> <p>(a) <i>Use of public school personnel.</i> An LEA may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities—</p> <p>(1) To the extent necessary to provide services under §§300.130 through 300.144 for parentally-placed private school children with disabilities; and</p> <p>(2) If those services are not normally provided by the private school.</p> <p>(b) <i>Use of private school personnel.</i> An LEA may use funds available under sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under §§300.130 through 300.144 if—</p> <p>(1) The employee performs the services outside of his or her regular hours of duty; and</p> <p>(2) The employee performs the services under public supervision and control.</p> <p>(Authority: 20 U.S.C. 1412(a)(10)(A)) Last Amended: 71 FR 46768, Aug. 14, 2006</p> <p>§ 300.143 Separate classes prohibited.</p> <p>An LEA may not use funds available under section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the children if—¹</p>		
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<p>(a) The classes are at the same site; and</p> <p>(b) The classes include children enrolled in public schools and children enrolled in private schools.</p> <p>(Authority: 20 U.S.C. 1412(a)(10)(A)) Last Amended: 71 FR 46768, Aug. 14, 2006</p> <p>§ 300.144 Property, equipment, and supplies.</p> <p>(a) A public agency must control and administer the funds used to provide special education and related services under §§300.137 through 300.139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.</p> <p>(b) The public agency may place equipment and supplies in a private school for the period of time needed for the Part B program.</p> <p>(c) The public agency must ensure that the equipment and supplies placed in a private school—</p> <ol style="list-style-type: none"> (1) Are used only for Part B purposes; and (2) Can be removed from the private school without remodeling the private school facility. <p>(d) The public agency must remove equipment and supplies from a private school if—</p> <ol style="list-style-type: none"> (1) The equipment and supplies are no longer needed for Part B purposes; or (2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes. <p>(e) No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.</p> <p>(Authority: 20 U.S.C. 1412(a)(10)(A)(vii)) Last Amended: 71 FR 46768, Aug. 14, 2006</p> <p>Children With Disabilities in Private Schools Placed or Referred by Public Agencies</p> <p>§ 300.145 Applicability of §§ 300.146 through 300.147. Sections 300.146 through 300.147 apply only to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services. (Authority: 20 U.S.C. 1412(a)(10)(B)) Last Amended: 71 FR 46769, Aug. 14, 2006</p> <p>§ 300.146 Responsibility of SEA. Each SEA must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency—</p>		
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<p>(a) Is provided special education and related services—</p> <p>(1) In conformance with an IEP that meets the requirements of §§300.320 through 300.325; and</p> <p>(2) At no cost to the parents;</p> <p>(b) Is provided an education that meets the standards that apply to education provided by the SEA and LEAs including the requirements of this part, except for §300.156(c); and</p> <p>(c) Has all of the rights of a child with a disability who is served by a public agency.</p> <p>(Authority: 20 U.S.C. 1412(a)(10)(B)) Last Amended: 82 FR 29759, June 30, 2017</p> <p>§ 300.147 Implementation by SEA. In implementing §300.146, the SEA must—</p> <p>(a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;</p> <p>(b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and</p> <p>(c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.</p> <p>(Authority: 20 U.S.C. 1412(a)(10)(B)) Last Amended: 71 FR 46769, Aug. 14, 2006</p> <p>Children With Disabilities Enrolled by Their Parents in Private Schools When FAPE Is at Issue</p> <p>§ 300.148 Placement of children by parents when FAPE is at issue.</p> <p>(a) <i>General.</i> This part does not require an LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with §§300.131 through 300.144.</p> <p>(b) <i>Disagreements about FAPE.</i> Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in §§300.504 through 300.520.</p> <p>(c) <i>Reimbursement for private school placement.</i> If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral</p>	<p>§ 89.1075. General Program Requirements and Local District Procedures. [Excerpt]</p> <p>...</p> <p>(g) School districts that contract for services from non-public day schools must do so in accordance with 34 Code of Federal Regulations, §300.147, and procedures developed by the TEA.</p> <p>Last Amended: January 1, 2015, 39 TexReg 10446</p>	
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<p>by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.</p> <p>(d) <i>Limitation on reimbursement.</i> The cost of reimbursement described in paragraph (c) of this section may be reduced or denied—</p> <p>(1) If—</p> <p>(i) At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or</p> <p>(ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section;</p> <p>(2) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in §300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or</p> <p>(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.</p> <p>(e) <i>Exception.</i> Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement—</p> <p>(1) Must not be reduced or denied for failure to provide the notice if—</p> <p>(i) The school prevented the parents from providing the notice;</p> <p>(ii) The parents had not received notice, pursuant to §300.504, of the notice requirement in paragraph (d)(1) of this section; or</p> <p>(iii) Compliance with paragraph (d)(1) of this section would likely result in physical harm to the child; and</p> <p>(2) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if—</p> <p>(i) The parents are not literate or cannot write in</p>		
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<p>English; or</p> <p>(ii) Compliance with paragraph (d)(1) of this section would likely result in serious emotional harm to the child.</p> <p>(Authority: 20 U.S.C. 1412(a)(10)(C)) Last Amended: 71 FR 46769, Aug. 14, 2006</p> <p>SEA Responsibility for General Supervision and Implementation of Procedural Safeguards</p> <p>§ 300.149 SEA responsibility for general supervision.</p> <p>(a) The SEA is responsible for ensuring—</p> <p>(1) That the requirements of this part are carried out; and</p> <p>(2) That each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency (but not including elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior)—</p> <p>(i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA; and</p> <p>(ii) Meets the educational standards of the SEA (including the requirements of this part).</p> <p>(3) In carrying out this part with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 <i>et seq.</i>) are met.</p> <p>(b) The State must have in effect policies and procedures to ensure that it complies with the monitoring and enforcement requirements in §§300.600 through 300.602 and §§300.606 through 300.608.</p> <p>(c) Part B of the Act does not limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of FAPE to children with disabilities in the State.</p> <p>(d) Notwithstanding paragraph (a) of this section, the Governor (or another individual pursuant to State law) may assign to any public agency in the State the responsibility of ensuring that the requirements of Part B of the Act are met with respect to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons.</p> <p>(Authority: 20 U.S.C. 1412(a)(11); 1416) Last Amended: 71 FR 46770, Aug. 14, 2006</p> <p>§ 300.150 SEA implementation of procedural safeguards.</p> <p>The SEA (and any agency assigned responsibility pursuant to §300.149(d)) must have in effect procedures to inform each public</p>		<p>§ 25.001. Admission. [Excerpt]</p> <p>...</p> <p>(b) The board of trustees of a school district or its designee shall admit into the public schools of the district free of tuition a person who is over five and younger than 21 years of age on the first day of September of the school year in which admission is sought, and may admit a person who is at least 21 years of age and under 26 years of age for the purpose of completing the requirements for a high school diploma, if:</p> <p>...</p> <p>(5) the person is homeless, as defined by 42 U.S.C. Section 11302, regardless of the residence of the person, of either parent of the person, or of the person's guardian or other person having lawful control of the person;</p> <p>...</p> <p>Last Amended: 84th Leg., R.S., Ch. 142 (H.B. 4), Sec. 3, eff. May 28, 2015 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 1, eff. September 1, 2015</p>
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agency of its responsibility for ensuring effective implementation of procedural safeguards for the children with disabilities served by that public agency.
 (Authority: 20 U.S.C. 1412(a)(11); 1415(a))
 Last Amended: 71 FR 46770, Aug. 14, 2006

**Conflict Resolution at the Lowest Possible Level
 [Not in Federal Regulations; See Texas Laws and Rules]**

§ 89.1150. General Provisions.

- (a) It is the policy and intent of the Texas Education Agency (TEA) to encourage and support the resolution of any dispute that arises between a parent and a public education agency relating to the identification, evaluation, or educational placement of or the provision of a free appropriate public education (FAPE) to a student with a disability at the lowest level possible and in a prompt, efficient, and effective manner.
- (b) The possible options for resolving disputes include, but are not limited to:
 - (1) meetings of the student's admission, review, and dismissal committee, including individualized education program (IEP) facilitation if offered by the public education agency in accordance with §89.1196 of this title (relating to Individualized Education Program Facilitation);
 - (2) meetings or conferences with the student's teachers;
 - (3) meetings or conferences, subject to the public education agency's policies, with the campus administrator, the special education director of the public education agency (or the shared services arrangement to which the public education agency may be a member), the superintendent of the public education agency, or the board of trustees of the public education agency;
 - (4) requesting state IEP facilitation in accordance with §89.1197 of this title (relating to State Individualized Education Program Facilitation);
 - (5) requesting mediation through the TEA in accordance with 34 Code of Federal Regulations (CFR), §300.506;
 - (6) filing a complaint with the TEA in accordance with 34 CFR, §300.153; or
 - (7) requesting a due process hearing through the TEA in accordance with 34 CFR, §§300.507-300.514.

Last Amended: January 1, 2015, 39 TexReg 10446

State Complaint Procedures

§ 300.151 Adoption of State complaint procedures.

- (a) *General.* Each SEA must adopt written procedures for—
 - (1) Resolving any complaint, including a complaint filed by

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<p>an organization or individual from another State, that meets the requirements of §300.153 by—</p> <ul style="list-style-type: none"> (i) Providing for the filing of a complaint with the SEA; and (ii) At the SEA's discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint; and <p>(2) Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State procedures under §§300.151 through 300.153.</p> <p>(b) <i>Remedies for denial of appropriate services.</i> In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address—</p> <ul style="list-style-type: none"> (1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and (2) Appropriate future provision of services for all children with disabilities. <p>(Authority: 20 U.S.C. 1221e-3) Last Amended: 71 FR 46770, Aug. 14, 2006</p> <p>§ 300.152 Minimum State complaint procedures.</p> <p>(a) <i>Time limit; minimum procedures.</i> Each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under §300.153 to—</p> <ul style="list-style-type: none"> (1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary; (2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; (3) Provide the public agency with the opportunity to respond to the complaint, including, at a minimum— <ul style="list-style-type: none"> (i) At the discretion of the public agency, a proposal to resolve the complaint; and (ii) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with §300.506; (4) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part; and (5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains— 	<p>§ 89.1195. Special Education Complaint Resolution.</p> <p>(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).</p> <p>(b) A complaint may be filed with the TEA by any individual or organization and must:</p> <ul style="list-style-type: none"> (1) be in writing; (2) include the signature and contact information for the complainant; (3) contain a statement that a public education agency has violated Part B of the IDEA; 34 CFR, §300.1 et seq.; or a state special education statute or administrative rule; (4) include the facts upon which the complaint is based; (5) if alleging violations with respect to a specific student, include: <ul style="list-style-type: none"> (A) the name and address of the residence of the student; (B) the name of the school the student is attending; (C) in the case of a homeless child or youth (within the meaning of §725(2) of the McKinney-Vento 	
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<p>(i) Findings of fact and conclusions; and</p> <p>(ii) The reasons for the SEA's final decision.</p> <p>(b) <i>Time extension; final decision; implementation.</i> The SEA's procedures described in paragraph (a) of this section also must—</p> <p>(1) Permit an extension of the time limit under paragraph (a) of this section only if—</p> <p>(i) Exceptional circumstances exist with respect to a particular complaint; or</p> <p>(ii) The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section, or to engage in other alternative means of dispute resolution, if available in the State; and</p> <p>(2) Include procedures for effective implementation of the SEA's final decision, if needed, including—</p> <p>(i) Technical assistance activities;</p> <p>(ii) Negotiations; and</p> <p>(iii) Corrective actions to achieve compliance.</p> <p>(c) <i>Complaints filed under this section and due process hearings under §300.507 and §§300.530 through 300.532.</i></p> <p>(1) If a written complaint is received that is also the subject of a due process hearing under §300.507 or §§300.530 through 300.532, or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.</p> <p>(2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties—</p> <p>(i) The due process hearing decision is binding on that issue; and</p> <p>(ii) The SEA must inform the complainant to that effect.</p> <p>(3) A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the SEA.</p> <p>(Authority: 20 U.S.C. 1221e-3) Last Amended: 71 FR 46770, Aug. 14, 2006</p>	<p>Homeless Act (42 United States Code, §11434a(2)), available contact information for the student and the name of the school the student is attending;</p> <p>(D) a description of the nature of the problem of the student, including facts relating to the problem; and</p> <p>(E) a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed;</p> <p>(6) allege a violation that occurred not more than one calendar year prior to the date the complaint is received; and</p> <p>(7) be forwarded to the public education agency that is the subject of the complaint at the same time that the complaint is filed with the TEA.</p> <p>(c) A complaint must be filed with the TEA by 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.</p> <p>(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.</p> <p>(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.</p> <p>(1) The TEA must send written notification to the parties acknowledging receipt of a complaint.</p> <p>(A) The notification must include:</p> <p>(i) the alleged violations that will be investigated;</p> <p>(ii) alternative procedures available to address allegations in the complaint that are outside of the scope of Part B of the IDEA; 34 CFR, §300.1, et seq.; or a state special education statute or administrative rule;</p> <p>(iii) a statement that the public education agency may, at its discretion, investigate the alleged violations and propose a resolution of the complaint;</p> <p>(iv) a statement that the parties have the opportunity to resolve the complaint through mediation in accordance with the procedures in §89.1193 of this title (relating to Special Education Mediation);</p> <p>(v) a timeline for the public education agency to submit:</p> <p>(l) documentation demonstrating that the</p>	
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	<p>complaint has been resolved; or</p> <ul style="list-style-type: none"> (II) a written response to the complaint and all documentation and information requested by the TEA; (vi) a statement that the complainant may submit additional information about the allegations in the complaint, either orally or in writing within a timeline specified by the TEA, and may provide a copy of any additional information to the public education agency to assist the parties in resolving the dispute at the local level; and (vii) a statement that the TEA may grant extensions of the timeline for a party to submit information under clause (v) or (vi) of this subparagraph at the request of either party. <p>(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.</p> <p>(2) If the complaint is also the subject of a due process hearing or if it contains multiple issues of which one or more are part of that due process hearing, the TEA must:</p> <ul style="list-style-type: none"> (A) set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing; and (B) resolve any issue in the complaint that is not a part of the due process hearing. <p>(3) If an issue raised in the complaint has previously been decided in a due process hearing involving the same parties, the TEA must inform the complainant that the due process hearing decision is binding.</p> <p>(4) The TEA has 60 calendar days after a valid written complaint is received to carry out the investigation and to resolve the complaint. The TEA may extend the time limit beyond 60 calendar days if exceptional circumstances, as determined by the TEA, exist with respect to a particular complaint. The parties will be notified in writing by the TEA of the exceptional circumstances, if applicable, and the extended time limit. The time limit may also be extended if the parties</p>	
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	<p>agree to extend it in order to engage in mediation pursuant to §89.1193 of this title or other alternative means of dispute resolution. In accordance with the Texas Education Code, §29.010(e), the TEA must expedite a complaint alleging that a public education agency has refused to enroll a student eligible for special education and related services or that otherwise indicates a need for expedited resolution, as determined by the TEA.</p> <p>(5) During the course of the investigation, the TEA must:</p> <ul style="list-style-type: none"> (A) conduct an investigation of the complaint that must include a complete review of all relevant documentation and that may include interviews with appropriate individuals and an independent on-site investigation, if necessary; (B) consider all facts and issues presented and the applicable requirements specified in law, regulations, or standards; (C) make a determination of compliance or noncompliance on each issue in the complaint based upon the facts and applicable law, regulations, or standards and issue a written report of findings of fact and conclusions, including reasons for the decision, and any corrective actions that are required, including the time period within which each action must be taken; (D) review any evidence that the public education agency has corrected noncompliance on its own initiative; (E) ensure that the TEA's final decision is effectively implemented, if needed, through technical assistance activities, negotiations, and corrective actions to achieve compliance; and (F) in the case of a complaint filed by an individual other than the student's parent, provide a copy of the written report only if written parental consent has been provided to the TEA. <p>(6) In resolving a complaint in which a failure to provide appropriate services is found, the TEA must address:</p> <ul style="list-style-type: none"> (A) the failure to provide appropriate services, including corrective action appropriate to address the needs of the student, including compensatory services, monetary reimbursement, or other corrective action appropriate to the needs of the student; and (B) appropriate future provision of services for all students with disabilities. <p>(7) In accordance with 34 CFR, §300.600(e), the public education agency must complete all required corrective actions as soon as possible, and in no case later than one year after the TEA's identification of the noncompliance. A public education agency's failure to correct the identified noncompliance within the one-year</p>	
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<p>§ 300.153 Filing a complaint.</p> <p>(a) An organization or individual may file a signed written complaint under the procedures described in §§300.151 through 300.152.</p> <p>(b) The complaint must include—</p> <ol style="list-style-type: none"> (1) A statement that a public agency has violated a requirement of Part B of the Act or of this part; (2) The facts on which the statement is based; (3) The signature and contact information for the complainant; and (4) If alleging violations with respect to a specific child— <ol style="list-style-type: none"> (i) The name and address of the residence of the child; (ii) The name of the school the child is attending; (iii) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending; (iv) A description of the nature of the problem of the child, including facts relating to the problem; and 	<p>timeline will result in an additional finding of noncompliance under 34 CFR, §300.600(e), and may result in sanctions against the public education agency in accordance with §89.1076 of this title (relating to Interventions and Sanctions).</p> <p>(f) If a party to a complaint believes that the TEA's written report includes an error that is material to the determination in the report, the party may submit a signed, written request for reconsideration to the TEA by mail, hand-delivery, or facsimile within 15 calendar days of the date of the report. The party's reconsideration request must identify the asserted error and include any documentation to support the claim. The party filing a reconsideration request must forward a copy of the request to the other party at the same time that the request is filed with the TEA. The other party may respond to the reconsideration request within five calendar days of the date on which the TEA received the request. The TEA will consider the reconsideration request and provide a written response to the parties 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.</p> <p>(g) In accordance with 34 CFR, §300.151, the TEA's complaint resolution procedures must be widely disseminated to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.</p> <p>Last Amended: January 1, 2015, 39 TexReg 10446</p>	
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<p>(v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.</p> <p>(c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §300.151.</p> <p>(d) The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the SEA.</p> <p>(Authority: 20 U.S.C. 1221e-3) Last Amended: 71 FR 46771, Aug. 14, 2006</p> <p>Methods of Ensuring Services</p> <p>§ 300.154 Methods of ensuring services.</p> <p>(a) <i>Establishing responsibility for services.</i> The Chief Executive Officer of a State or designee of that officer must ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency described in paragraph (b) of this section and the SEA, in order to ensure that all services described in paragraph (b)(1) of this section that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute under paragraph (a)(3) of this section. The agreement or mechanism must include the following:</p> <ol style="list-style-type: none"> (1) An identification of, or a method for defining, the financial responsibility of each agency for providing services described in paragraph (b)(1) of this section to ensure FAPE to children with disabilities. The financial responsibility of each noneducational public agency described in paragraph (b) of this section, including the State Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the LEA (or the State agency responsible for developing the child's IEP). (2) The conditions, terms, and procedures under which an LEA must be reimbursed by other agencies. (3) Procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism. (4) Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in paragraph (b)(1) of this section. <p>(b) <i>Obligation of noneducational public agencies.</i></p>	<p>§ 89.1115. Memorandum of Understanding Concerning Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities.</p> <p>(a) Parties. The state agencies named in this subsection are parties to this memorandum of understanding (MOU) and will be collectively referred to as the "parties." The term "Health and Human Service (HHS) agencies" will refer to all parties except the Texas Education Agency, Texas Juvenile Probation Commission, and Texas Youth Commission.</p> <ol style="list-style-type: none"> (1) Texas Education Agency (TEA); (2) Texas Department of Human Services (TDHS); (3) Texas Department of Mental Health and Mental Retardation (TDMHMR); (4) Texas Department of Health (TDH); (5) Texas Department of Protective and Regulatory Services (PRS); (6) Texas Interagency Council on Early Childhood Intervention (ECI); (7) Texas Commission on Alcohol and Drug Abuse (TCADA); (8) Texas Juvenile Probation Commission (TJPC); and (9) Texas Youth Commission (TYC). <p>(b) Purpose. In accordance with Texas Education Code (TEC), §29.012(d), the purpose of this MOU is to:</p> <ol style="list-style-type: none"> (1) establish the respective responsibilities of school districts and of residential facilities (RFs) for the provision of a free appropriate public education (FAPE), as required by the Individuals with Disabilities Education Act (IDEA)(20 USC §1400 et seq.) and its subsequent amendments, including each requirement for children with disabilities who reside in those facilities; (2) coordinate regulatory and planning functions of the parties; 	<p>§ 29.012. Residential Facilities. [Exerpt]</p> <p>(a) Except as provided by Subsection (b)(2), not later than the third day after the date a person 22 years of age or younger is placed in a residential facility, the residential facility shall:</p> <ol style="list-style-type: none"> (1) if the person is three years of age or older, notify the school district in which the facility is located, unless the facility is an open-enrollment charter school; or (2) if the person is younger than three years of age, notify a local early intervention program in the area in which the facility is located. <p>(b) An agency or political subdivision that funds, licenses, certifies, contracts with, or regulates a residential facility must:</p> <ol style="list-style-type: none"> (1) require the facility to comply with Subsection (a) as a condition of the funding, licensing, certification, or contracting; or (2) if the agency or political subdivision places a person in a residential facility, provide the notice under Subsection (a) for that person. <p>(c) For purposes of enrollment in a school, a person who resides in a residential facility is considered a resident of the school district or geographical area served by the open-enrollment charter school in which the facility is located.</p> <p>...</p> <p>(d) The Texas Education Agency, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Services, the Texas Department of Health, the Department of Protective and Regulatory Services, the Interagency Council on Early Childhood Intervention, the Texas Commission on Alcohol and Drug Abuse, and the Texas Juvenile Justice Department by a cooperative effort shall develop and by rule adopt a memorandum of understanding. The memorandum must:</p> <ol style="list-style-type: none"> (1) establish the respective responsibilities of school districts and of residential facilities for the provision of a
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<p>(1)</p> <p>(i) If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to paragraph (a) of this section, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in § 300.5 relating to assistive technology devices, §300.6 relating to assistive technology services, §300.34 relating to related services, §300.42 relating to supplementary aids and services, and §300.43 relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the State, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to paragraph (a) of this section or an agreement pursuant to paragraph (c) of this section.</p> <p>(ii) A noneducational public agency described in paragraph (b)(1)(i) of this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.</p> <p>(2) If a public agency other than an educational agency fails to provide or pay for the special education and related services described in paragraph (b)(1) of this section, the LEA (or State agency responsible for developing the child's IEP) must provide or pay for these services to the child in a timely manner. The LEA or State agency is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency must reimburse the LEA or State agency in accordance with the terms of the interagency agreement or other mechanism described in paragraph (a) of this section.</p> <p>(c) <i>Special rule.</i> The requirements of paragraph (a) of this section may be met through—</p> <p>(1) State statute or regulation;</p> <p>(2) Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or</p> <p>(3) Other appropriate written methods as determined by the Chief Executive Officer of the State or designee of that officer and approved by the Secretary.</p> <p>(d) <i>Children with disabilities who are covered by public benefits or insurance.</i></p> <p>(1) A public agency may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this part, as permitted under the public benefits or</p>	<p>(3) establish criteria for determining when a public school will provide educational services;</p> <p>(4) provide for appropriate educational space when education services will be provided at the residential facility;</p> <p>(5) establish measures designed to ensure the safety of students and teachers; and</p> <p>(6) provide for binding arbitration consistent with Texas Government Code, Chapter 2009, and Civil Practice and Remedies Code, §154.027.</p> <p>(c) Definitions. The following words and terms, when used in this MOU, shall have the following meaning, unless the context clearly indicates otherwise.</p> <p>(1) Consistent with TEC, §5.001(8), "residential facility" (RF) means:</p> <p>(A) a facility operated by a state agency or political subdivision, including a child placement agency, that provides 24-hour custody or care of a person 22 years of age or younger, if the person resides in the facility for detention, treatment, foster care, or any non-educational purpose; and</p> <p>(B) any person or entity that contracts with or is funded, licensed, certified, or regulated by a state agency or political subdivision to provide custody or care for a person under subparagraph (A) of this paragraph. RFs include, but are not limited to:</p> <p>(i) child care facilities or institutions;</p> <p>(ii) independent foster group homes providing basic, therapeutic or rehabilitative services;</p> <p>(iii) independent foster family homes providing basic, therapeutic or rehabilitative services;</p> <p>(iv) agency foster family/group homes verified by a child placing agency licensed by PRS;</p> <p>(v) intermediate care facilities for the mentally retarded (ICFs-MR);</p> <p>(vi) psychiatric treatment centers;</p> <p>(vii) therapeutic camps or ranches;</p> <p>(viii) residential treatment centers licensed by PRS;</p> <p>(ix) nursing facilities;</p> <p>(x) TYC halfway houses and contract facilities;</p> <p>(xi) emergency shelters;</p> <p>(xii) hospitals;</p> <p>(xiii) juvenile pre-adjudication detention facilities;</p> <p>(xiv) juvenile post-adjudication secure correctional facilities;</p> <p>(xv) residential facilities funded and/or licensed by TCADA;</p>	<p>free, appropriate public education, as required by the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.) and its subsequent amendments, including each requirement for children with disabilities who reside in those facilities;</p> <p>(2) coordinate regulatory and planning functions of the parties to the memorandum;</p> <p>(3) establish criteria for determining when a public school will provide educational services;</p> <p>(4) provide for appropriate educational space when education services will be provided at the residential facility;</p> <p>(5) establish measures designed to ensure the safety of students and teachers; and</p> <p>(6) provide for binding arbitration consistent with Chapter 2009, Government Code, and Section 154.027, Civil Practice and Remedies Code.</p> <p>(e) This section does not apply to a residential treatment facility for juveniles established under Section 221.056, Human Resources Code.</p> <p>...</p> <p>Last Amended: 85th Leg., R.S., Ch. 1026 (H.B. 1569), Sec. 1, eff. June 15, 2017 85th Leg., R.S., Ch. 764 (S.B. 2080), Sec. 1, June 12, 2017</p> <p>§ 29.013. Noneducational Community-Based Support Services For Certain Students with Disabilities.</p> <p>(a) The agency shall establish procedures and criteria for the allocation of funds appropriated under this section to school districts for the provision of noneducational community-based support services to certain students with disabilities and their families so that those students may receive an appropriate free public education in the least restrictive environment.</p> <p>(b) The funds may be used only for eligible students with disabilities who would remain or would have to be placed in residential facilities primarily for educational reasons without the provision of noneducational community-based support services.</p> <p>(c) The support services may include in-home family support, respite care, and case management for families with a student who otherwise would have been placed by a district in a private residential facility.</p> <p>(d) The provision of services under this section does not supersede or limit the responsibility of other agencies to provide or pay for costs of noneducational community-based support services to enable any student with disabilities to receive a free appropriate public education in the least restrictive environment. Specifically, services provided under this section may not be used for a student with disabilities who is currently placed or who needs to be placed in a residential facility primarily for noneducational reasons.</p> <p>Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995</p>
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<p>insurance program, except as provided in paragraph (d)(2) of this section.</p> <p>(2) With regard to services required to provide FAPE to an eligible child under this part, the public agency—</p> <p>(i) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of the Act;</p> <p>(ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parents otherwise would be required to pay;</p> <p>(iii) May not use a child's benefits under a public benefits or insurance program if that use would—</p> <p>(A) Decrease available lifetime coverage or any other insured benefit;</p> <p>(B) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;</p> <p>(C) Increase premiums or lead to the discontinuation of benefits or insurance; or</p> <p>(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and</p> <p>(iv) Prior to accessing a child's or parent's public benefits or insurance for the first time, and after providing notification to the child's parents consistent with paragraph (d)(2)(v) of this section, must obtain written, parental consent that—</p> <p>(A) Meets the requirements of §99.30 of this title and §300.622, which consent must specify the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child), the purpose of the disclosure (e.g., billing for services under part 300), and the agency to which the disclosure may be made (e.g., the State's public benefits or insurance program (e.g., Medicaid)); and</p> <p>(B) Specifies that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under part 300.</p> <p>(v) Prior to accessing a child's or parent's public benefits or insurance for the first time, and annually thereafter, must provide written</p>	<p>(xvi) settings other than the student's natural or adoptive home in which residential services are provided in programs authorized by the Social Security Act, §1915(c); and</p> <p>(xvii) state hospitals, state schools, and state centers operated by TDMHMR.</p> <p>(2) "Student with a disability" means an individual who is eligible to receive special education and related services in accordance with IDEA and its implementing regulations, Code of Federal Regulations, Title 34, §§300.1 et seq., and state laws and rules, including, without limitation, TEC, Chapter 29, and Chapter 89 of this title (relating to Adaptations for Special Populations).</p> <p>(3) Consistent with 20 USC §1401(8), "free appropriate public education" (FAPE) means special education and related services that:</p> <p>(A) are provided at public expense, under public supervision and direction, and without charge;</p> <p>(B) meet the standards of TEA;</p> <p>(C) include preschool, elementary, or secondary school education; and</p> <p>(D) are provided in conformity with the student's individualized education program (IEP).</p> <p>(4) Consistent with 20 U. S. C. §1401(15), "local educational agency" (LEA) means any public authority, institution, or agency having administrative control and direction of a public elementary or secondary school, including a public charter school that is established as an LEA under state law.</p> <p>(d) Terms of MOU. The parties agree to the following terms:</p> <p>(1) The responsibilities of LEAs and RFs related to the provision of a FAPE to students with disabilities who reside in RFs are established as follows.</p> <p>(A) LEAs must provide or ensure the provision of a FAPE to students with disabilities residing in RFs in accordance with IDEA, applicable federal regulations, and state laws and rules.</p> <p>(i) Except as provided in paragraph (2) of this subsection, an LEA must provide or ensure the provision of a FAPE for a student with a disability residing in an RF located in the geographical area served by that LEA.</p> <p>(ii) If an LEA places a student with a disability in an RF for educational purposes, the placing LEA must provide or ensure the provision of a FAPE to the student.</p> <p>(B) Not later than the third day after the date a person 22 years of age or younger is placed in an RF, the RF must provide notification in accordance with TEC, §29.012(a), as follows:</p>	<p>§ 37.011. Juvenile Justice Alternative Education Program [Excerpt]</p> <p>...</p> <p>(k) Each school district in a county with a population greater than 125,000 and the county juvenile board shall annually enter into a joint memorandum of understanding that:</p> <p>...</p> <p>(8) establishes a plan to address special education services required by law.</p> <p>...</p> <p>Last Amended: 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 21.003(20), eff. Sept. 1, 2017</p>
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<p>notification, consistent with §300.503(c), to the child's parents, that includes—</p> <p>(A) A statement of the parental consent provisions in paragraphs (d)(2)(iv)(A) and (B) of this section;</p> <p>(B) A statement of the "no cost" provisions in paragraphs (d)(2)(i) through (iii) of this section;</p> <p>(C) A statement that the parents have the right under 34 CFR part 99 and part 300 to withdraw their consent to disclosure of their child's personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) at any time; and</p> <p>(D) A statement that the withdrawal of consent or refusal to provide consent under 34 CFR part 99 and part 300 to disclose personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.</p> <p>(e) <i>Children with disabilities who are covered by private insurance.</i></p> <p>(1) With regard to services required to provide FAPE to an eligible child under this part, a public agency may access the parents' private insurance proceeds only if the parents provide consent consistent with §300.9.</p> <p>(2) Each time the public agency proposes to access the parents' private insurance proceeds, the agency must—</p> <p>(i) Obtain parental consent in accordance with paragraph (e)(1) of this section; and</p> <p>(ii) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.</p> <p>(f) <i>Use of Part B funds.</i></p> <p>(1) If a public agency is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required under this part, to ensure FAPE the public agency may use its Part B funds to pay for the service.</p> <p>(2) To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the public agency may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parents'</p>	<p>(i) if the person placed in the RF is three years of age or older, the RF must notify the LEA in which the RF is located, unless the RF is an open-enrollment charter school or the RF has been designated as an LEA (e.g., TYC correctional facilities, Texas School for the Deaf, the University of Texas Medical Branch); or</p> <p>(ii) if the person placed in the RF is younger than three years of age, the RF must notify a local early childhood intervention program in the area in which the RF is located.</p> <p>(2) Regulatory and planning functions of the parties are coordinated as follows.</p> <p>(A) The parties will require LEAs and RFs to:</p> <p>(i) share, within a reasonable period of time and to the extent permitted by applicable statutes and regulations, all appropriate records and relevant information relating to a student with a disability. This subsection does not authorize the LEA to modify requirements for admission and enrollment into an LEA as set forth in TEC, Chapter 25. The records and information to be shared may include, but are not limited to:</p> <p>(I) birth certificate or other identifying document that proves the student's age;</p> <p>(II) medical history and medical records, including current immunization records and a history of infectious disease (e.g., Hepatitis B, tuberculosis), including a description of any behavioral characteristics related to the transmission of such disease;</p> <p>(III) social history;</p> <p>(IV) vision and hearing screening and evaluation;</p> <p>(V) evaluation reports, including psychological, educational, related service, assistive technology and vocational evaluations, and behavioral assessments;</p> <p>(VI) treatment plan of care or service;</p> <p>(VII) educational history (e.g., previous educational placement information);</p> <p>(VIII) any relevant court orders (e.g., orders related to placement in an RF, guardianship or conservatorship, or court-ordered services);</p> <p>(IX) information regarding a student's movement from an RF to a subsequent</p>	
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<p>benefits or insurance (e.g., the deductible or co-pay amounts).</p> <p>(g) <i>Proceeds from public benefits or insurance or private insurance.</i></p> <p>(1) Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 2 CFR 200.307.</p> <p>(2) If a public agency spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered “ State or local ” funds for purposes of the maintenance of effort provisions in §§300.163 and 300.203.</p> <p>(h) <i>Construction.</i> Nothing in this part should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public benefits or insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397aa through 1397jj, or any other public benefits or insurance program.</p> <p>(Authority: 20 U.S.C. 1412(a)(12) and (e)) Last Amended: 82 FR 29759, June 30, 2017</p>	<p>residence, including but not limited to the date the student left the RF and the location of the student’s subsequent residence; and</p> <p>(X) name and phone number of contact persons representing the RF and the LEA; and</p> <p>(ii) coordinate a student’s individualized education program (IEP) and treatment plan of care or service. Coordination between an LEA and RF includes but is not limited to communication about responsibilities and timelines related to the development and implementation of the IEP and treatment plan, including permanency planning.</p> <p>(B) TEA will require LEAs to provide:</p> <p>(i) the name and phone number of the contact person representing the RF to the surrogate parent, upon assignment of the surrogate parent;</p> <p>(ii) the name and phone number of the surrogate parent, upon assignment of the surrogate parent, to the contact person representing the RF; and</p> <p>(iii) designation and training of surrogate parents in accordance with §89.1047 of this title (relating to Procedures for Surrogate and Foster Parents).</p> <p>(C) TYC and the HHS agencies will provide the following notifications to TEA.</p> <p>(i) TYC and the HHS agencies, other than PRS, will notify TEA when an RF opens, closes, expands, or reduces its capacity to provide services, if the notifying agency expects such action will have a significant effect on one or more LEAs. The notice will be provided to TEA before the RF opens, closes, expands, or reduces its capacity to provide services, or as soon thereafter as the notifying agency becomes aware of the action. If an RF is closing, the notifying TYC or HHS agency will request that the RF attempt to obtain any consent necessary to release to TEA and an LEA, information about a student with a disability residing in the RF, including the student’s name, date of birth, social security number, disability, and name of the LEA to which the student will be moving. TEA will notify the affected LEA of the expected action so the LEA can adjust its capacity to serve students with disabilities.</p> <p>(ii) PRS will provide TEA with a copy of the notice required by Texas Human Resources Code, §42.0461(a)(2). Additionally, PRS and</p>	
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	<p>TEA will explore possible use of PRS' Child Care Licensing Automation Support Services management system to generate information that may assist TEA in its effort to notify LEAs when an RF opens, closes, expands, or reduces its capacity to provide services.</p> <p>(3) Criteria for determining when a public school will provide educational services are established as follows.</p> <p>(A) TEA will ensure that the local school district provides a FAPE to all eligible students with disabilities, in the least restrictive environment (LRE), to the maximum extent appropriate, to meet the individual educational needs of the student as determined by a duly-constituted admission, review, and dismissal (ARD) committee, and in accordance with §89.1001 of this title (relating to Scope and Applicability).</p> <p>(B) The student's ARD committee must determine the appropriate educational placement for the student, considering all available information regarding the educational needs of the student, and including the non-educational needs that may restrict the ability of the LEA to serve the student on a public school campus or other instructional setting. These non-educational needs could include the student's health and safety (e.g. substance abuse), and/or the student's placement in a restrictive RF program (e.g., juvenile incarceration or restrictive court-ordered placements). The ARD committee's determination must be individualized based on student need and not made on a categorical basis, such as the student's disability or residence in an RF. Further, ARD committees must not determine educational placement on the basis of what is most convenient to LEAs or RFs.</p> <p>(4) When educational services will be provided at an RF, appropriate educational space will be determined as follows.</p> <p>(A) The ARD committee must determine whether space available at the RF is appropriate for the provision of a FAPE. This determination must be based on the individual student's needs and the RF's available space.</p> <p>(B) An ARD committee must find alternative locations for providing educational services if the ARD committee or RF determines that the RF has no appropriate available space.</p> <p>(5) Measures designed to ensure the safety of students and teachers are established as follows.</p> <p>(A) The parties will require RFs and LEAs to agree in writing to the staffing levels that will be maintained by both the RF and the LEA to ensure the safety of students and teachers while educational services are provided at an RF.</p>	
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	<p>(B) TYC, TJPC, and HHS agencies will require RFs to communicate to LEA staff applicable safety, emergency, and security procedures to be followed while educational services are provided at an RF.</p> <p>(6) Disputes concerning the implementation of this MOU will be resolved as follows.</p> <p>(A) Local disputes. Resolution of disputes concerning implementation of this MOU between LEAs or between an LEA and an RF shall first be attempted at the local level. The specific issues involved in the dispute and possible solutions shall be identified and referred to local personnel authorized to make decisions necessary to resolve the dispute. If resolution is not reached after a reasonable period of time (not to exceed 45 calendar days unless the disputing entities agree otherwise), the LEA shall refer (and the RF may refer) the dispute to TEA for further negotiations toward a mutually agreeable resolution. TEA will contact the disputing entities and set up a meeting for this purpose. Local entities referring disputes to TEA shall identify:</p> <ul style="list-style-type: none"> (i) the nature of the dispute; (ii) any resolutions agreed upon; (iii) the issues that remain unresolved; and (iv) the contact persons representing the disputing entities. <p>(B) State agency disputes. Resolution of disputes concerning implementation of this MOU between two or more parties must first be attempted at the staff level. If resolution is not reached after a reasonable period of time (not to exceed 45 calendar days unless the disputing parties agree otherwise), the disputing parties will refer the dispute to their respective executive officers, or their designees for further negotiation. The appropriate state officials shall meet to seek resolution of the dispute.</p> <ul style="list-style-type: none"> (i) Mediation. If the chief executive officers of the disputing parties determine that the dispute cannot be resolved at their level, the disputing parties may pursue resolution through the use of mediation pursuant to the Governmental Dispute Resolution Act, Texas Government Code, Chapter 2009. (ii) Arbitration. If the disputing parties do not agree to pursue resolution of their dispute through mediation, or if mediation does not result in a resolution of their dispute, the disputing parties will participate in binding arbitration consistent with Texas Government 	
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<p>Additional Eligibility Requirements</p> <p>§ 300.155 Hearings relating to LEA eligibility. The SEA must not make any final determination that an LEA is not eligible for assistance under Part B of the Act without first giving the LEA reasonable notice and an opportunity for a hearing under 34 CFR 76.401(d). (Authority: 20 U.S.C. 1412(a)(13)) Last Amended: 71 FR 46772, Aug. 14, 2006</p> <p>§ 300.156 Personnel qualifications.</p> <p>(a) <i>General.</i> The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.</p> <p>(b) <i>Related services personnel and paraprofessionals.</i> The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that—</p> <ol style="list-style-type: none"> (1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and (2) Ensure that related services personnel who deliver services in their discipline or profession— <ol style="list-style-type: none"> (i) Meet the requirements of paragraph (b)(1) of this section; and (ii) Have not had certification or licensure 	<p>Code, Chapter 2009, and Texas Civil Practice and Remedies Code, §154.027.</p> <p>(7) Other terms of this MOU.</p> <p>(A) This MOU shall be signed by the executive officers of the participating agencies and shall be effective upon signature by all.</p> <p>(B) This MOU may be considered for expansion, modification, or amendment upon mutual agreement of the executive officers of the participating agencies.</p> <p>(C) In the event that federal and/or state laws should be amended, federally interpreted, or judicially interpreted so as to render continued implementation of this MOU unreasonable or impossible, the participating agencies may agree to amend or terminate this MOU.</p> <p>Last Amended: August 6, 2002, 27 TexReg 6851</p> <p>§ 89.1131. Qualifications of Special Education, Related Service, and Paraprofessional Personnel.</p> <p>(a) All special education and related service personnel shall be certified, endorsed, or licensed in the area or areas of assignment in accordance with 34 Code of Federal Regulations (CFR), §300.156; the Texas Education Code (TEC), §§21.002, 21.003, and 29.304; or appropriate state agency credentials.</p> <p>(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.</p> <ol style="list-style-type: none"> (1) Persons assigned to provide speech therapy instructional services must hold a valid Texas Education Agency certificate in speech and hearing therapy or speech and language therapy, or a valid state license as a speech/language pathologist. (2) Teachers holding only a special education endorsement for early childhood education for students with 	<p>§ 21.003. Certification Required. [Excerpt]</p> <p>(a) A person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by Subchapter B.</p> <p>(b) Except as otherwise provided by this subsection, a person may not be employed by a school district as an audiologist, occupational therapist, physical therapist, physician, nurse, school psychologist, associate school psychologist, licensed professional counselor, marriage and family therapist, social worker, or speech language pathologist unless the person is licensed by the state agency that licenses that profession and may perform specific services within those professions for a school district only if the person holds the appropriate credential from the appropriate state agency. As long as a person employed by a district before September 1, 2011, to perform marriage and family therapy, as defined by Section 502.002, Occupations Code, is employed by the same district, the person is not required to hold a license as a marriage and family therapist to perform marriage and family</p>
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<p>requirements waived on an emergency, temporary, or provisional basis; and</p> <p>(iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.</p> <p>(c) <i>Qualifications for special education teachers.</i></p> <p>(1) The qualifications described in paragraph (a) of this section must ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school—</p> <p>(i) Has obtained full State certification as a special education teacher (including certification obtained through an alternate route to certification as a special educator, if such alternate route meets minimum requirements described in 34 CFR 200.56(a)(2)(ii) as such section was in effect on November 28, 2008), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, the teacher must meet the certification or licensing requirements, if any, set forth in the State's public charter school law;</p> <p>(ii) Has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and</p> <p>(iii) Holds at least a bachelor's degree.</p> <p>(2) A teacher will be considered to meet the standard in paragraph (c)(1)(i) of this section if that teacher is participating in an alternate route to special education certification program under which—</p> <p>(i) The teacher—</p> <p>(A) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;</p> <p>(B) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;</p> <p>(C) Assumes functions as a teacher only for a specified period of time not to exceed three years; and</p> <p>(D) Demonstrates satisfactory progress toward full certification as prescribed by the State;</p>	<p>disabilities must be assigned only to programs serving infants through Grade 6.</p> <p>(3) Teachers certified in the education of students with visual impairments must be available to students with visual impairments, including deaf-blindness, through one of the school district's instructional options, a shared services arrangement with other school districts, or an education service center.</p> <p>(4) Teachers certified in the education of students with auditory impairments must be available to students 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.</p> <p>(5) The following provisions apply to physical education.</p> <p>(A) When the ARD committee has made the determination and the arrangements are specified in the student's individualized education program, physical education may be provided by the following personnel:</p> <p>(i) special education instructional or related service personnel who have the necessary skills and knowledge;</p> <p>(ii) physical education teachers;</p> <p>(iii) occupational therapists;</p> <p>(iv) physical therapists; or</p> <p>(v) occupational therapy assistants or physical therapy assistants working under supervision in accordance with the standards of their profession.</p> <p>(B) When these services are provided by special education personnel, the district must document that they have the necessary skills and knowledge. Documentation may include, but need not be limited to, inservice records, evidence of attendance at seminars or workshops, or transcripts of college courses.</p> <p>(6) Teachers assigned full-time or part-time to instruction of students from birth through age two with visual impairments, including deaf-blindness, must be certified in the education of students with visual impairments. Teachers assigned full-time or part-time to instruction of students from birth through age two who are deaf, including deaf-blindness, must be certified in education for students who are deaf and severely hard of hearing.</p> <p>(7) Teachers with secondary certification with the generic delivery system may be assigned to teach Grades 6-12 only.</p> <p>(c) Paraprofessional personnel must be certified and may be assigned to work with eligible students, general and special education teachers, and related service personnel. Educational aides may also be assigned to assist students</p>	<p>therapy with that district.</p> <p>...</p> <p>Last Amended: 84th Leg., R.S., Ch. 1135 (S.B. 168), Sec. 1, eff. June 19, 2015</p> <p>§ 21.031. Purpose.</p> <p>(a) The State Board for Educator Certification is established to recognize public school educators as professionals and to grant educators the authority to govern the standards of their profession. The board shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators.</p> <p>(b) In proposing rules under this subchapter, the board shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state.</p> <p>Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995</p> <p>§ 21.0485. Certification to Teach Students with Visual Impairments.</p> <p>(a) To be eligible to be issued a certificate to teach students with visual impairments, a person must:</p> <p>(1) complete either:</p> <p>(A) all course work required for that certification in an approved educator preparation program; or</p> <p>(B) an alternative educator certification program approved for the purpose by the board;</p> <p>(2) perform satisfactorily on each examination prescribed under Section 21.048 for certification to teach students with visual impairments, after completing the course work or program described by Subdivision (1); and</p> <p>(3) satisfy any other requirements prescribed by the board.</p> <p>(b) Subsection (a) does not apply to eligibility for a certificate to teach students with visual impairments, including eligibility for renewal of that certificate, if the application for the initial certificate was submitted on or before September 1, 2011.</p> <p>Last Amended: 82nd Leg., R.S., Ch. 362 (S.B. 54), Sec. 1, eff. September 1, 2011</p> <p>§ 29.304. Qualifications of Personnel.</p> <p>(a) A student who is deaf or hard of hearing must have an education in which teachers, psychologists, speech therapists, progress assessors, administrators, and others involved in education understand the unique nature of deafness and the hard-of-hearing condition. A teacher of students who are deaf or hard of hearing either must be proficient in appropriate language modes or use an interpreter certified in appropriate language modes if certification is available.</p>
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(ii) The State ensures, through its certification and licensure process, that the provisions in paragraph (c)(2)(i) of this section are met.

(d) *Policy.* In implementing this section, a State must adopt a policy that includes a requirement that LEAs in the State take measurable steps to recruit, hire, train, and retain personnel who meet the applicable requirements described in paragraph (c) of this section to provide special education and related services under this part to children with disabilities.

(e) *Rule of construction.* Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular SEA or LEA employee to meet the applicable requirements described in paragraph (c) of this section, or to prevent a parent from filing a complaint about staff qualifications with the SEA as provided for under this part.

(Authority: 20 U.S.C. 1412(a)(14))
Last Amended: 82 FR 29759, June 30, 2017

§ 300.157 Performance goals and indicators.
The State must—

(a) Have in effect established goals for the performance of children with disabilities in the State that—

- (1) Promote the purposes of this part, as stated in §300.1;
- (2) Are the same as the State's long-term goals and measurements of interim progress for children with disabilities under section 1111(c)(4)(A)(i) of the ESEA.
- (3) (3) Address graduation rates and dropout rates, as well as such other factors as the State may determine; and
- (4) (4) Are consistent, to the extent appropriate, with any other goals and academic standards for children established by the State;

(b) Have in effect established performance indicators the State will use to assess progress toward achieving the goals described in paragraph (a) of this section, including measurements of interim progress for children with disabilities under section 1111(c)(4)(A)(i)(cc) of the ESEA, 20 U.S.C. 6311; and

(c) Annually report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under paragraph (a) of this section, which may include elements of the reports required under section 1111(h) of the ESEA.

(Authority: 20 U.S.C. 1412(a)(15))
Last Amended: 82 FR 29760, June 30, 2017

with special education transportation, serve as a job coach, or serve in support of community-based instruction. Educational aides paid from state administrative funds may be assigned to special education clerical or administrative duties.

(d) Interpreting services for students who are deaf must be provided by an interpreter who is certified in the appropriate language mode(s), if certification in such mode(s) is available. If certification is available, the interpreter must be a certified member of or certified by the Registry of Interpreters for the Deaf (RID) or the Texas Board for Evaluation of Interpreters (BEI), Department of Assistive and Rehabilitative Services (DARS), Office for Deaf and Hard of Hearing Services (DHHS).

(e) Orientation and mobility instruction must be provided by a certified orientation and mobility specialist (COMS) who is certified by the Academy for Certification of Vision Rehabilitation and Education Professionals.

Last Amended: January 1, 2015, 39 TexReg 10446

(b) Each school district shall employ or provide access to appropriate qualified staff with proficient communications skills, consistent with credentialing requirements, to fulfill the responsibilities of the school district, and shall make positive efforts to employ qualified individuals with disabilities.

(c) Regular and special personnel who work with students who are deaf or hard of hearing must be adequately prepared to provide educational instruction and services to those students.

Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995

§ 37.004. Placement of Students with Disabilities. [Excerpt]
...
(d) A teacher in an alternative education program under Section 37.008 who has a special education assignment must hold an appropriate certificate or permit for that assignment.
...
Last Amended: 78th Leg., ch. 1276, Sec. 6.006, eff. Sept. 1, 2003

§ 29.001 Statewide Plan.
The agency shall 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 three and 21. The statewide design shall include the provision of services primarily through school districts and shared services arrangements, supplemented by regional education service centers. The agency shall also develop and implement a statewide plan with programmatic content that includes procedures designed to:

- (1) ensure state compliance with requirements for supplemental federal funding for all state-administered programs involving the delivery of instructional or related services to students with disabilities;
- (2) facilitate interagency coordination when other state agencies are involved in the delivery of instructional or related services to students with disabilities;
- (3) periodically assess statewide personnel needs in all areas of specialization related to special education and pursue strategies to meet those needs through a consortium of representatives from regional education service centers, local education agencies, and institutions of higher education and through other available alternatives;
- (4) ensure that regional education service centers throughout the state maintain a regional support function, which may include direct service delivery and a component designed to facilitate

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		<p>the placement of students with disabilities who cannot be appropriately served in their resident districts;</p> <ul style="list-style-type: none"> (5) allow the agency to effectively monitor and periodically conduct site visits of all school districts to ensure that rules adopted under this section are applied in a consistent and uniform manner, to ensure that districts are complying with those rules, and to ensure that annual statistical reports filed by the districts and not otherwise available through the Public Education Information Management System under Section 42.006 are accurate and complete; (6) ensure that appropriately trained personnel are involved in the diagnostic and evaluative procedures operating in all districts and that those personnel routinely serve on district admissions, review, and dismissal committees; (7) ensure that an individualized education program for each student with a disability is properly developed, implemented, and maintained in the least restrictive environment that is appropriate to meet the student's educational needs; (8) ensure that, when appropriate, each student with a disability is provided an opportunity to participate in career and technology and physical education classes, in addition to participating in regular or special classes; (9) ensure that each student with a disability is provided necessary related services; (10) ensure that an individual assigned to act as a surrogate parent for a child with a disability, as provided by 20 U.S.C. Section 1415(b), is required to: <ul style="list-style-type: none"> (A) complete a training program that complies with minimum standards established by agency rule; (B) visit the child and the child's school; (C) consult with persons involved in the child's education, including teachers, caseworkers, court-appointed volunteers, guardians ad litem, attorneys ad litem, foster parents, and caretakers; (D) review the child's educational records; (E) attend meetings of the child's admission, review, and dismissal committee; (F) exercise independent judgment in pursuing the child's interests; and (G) exercise the child's due process rights under applicable state and federal law; and (11) ensure that each district develops a process to be used by a teacher who instructs a student with a disability in a regular classroom setting: <ul style="list-style-type: none"> (A) to request a review of the student's individualized education program; (B) to provide input in the development of the student's individualized education program; (C) that provides for a timely district response to the teacher's request; and (D) that provides for notification to the student's parent or
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<p>§§ 300.158–300.159 [Reserved]</p> <p>§ 300.160 Participation in assessments.</p> <p>(a) <i>General.</i> A State must ensure that all children with disabilities are included in all general State and district-wide assessment programs, including assessments described under section 1111 of the ESEA, 20 U.S.C. 6311, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs.</p> <p>(b) <i>Accommodation guidelines.</i></p> <p>(1) A State (or, in the case of a district-wide assessment, an LEA) must develop guidelines for the provision of appropriate accommodations.</p> <p>(2) The State's (or, in the case of a district-wide assessment, the LEA's) guidelines must—</p> <p>(i) Identify only those accommodations for each assessment that do not invalidate the score; and</p> <p>(ii) Instruct IEP Teams to select, for each assessment, only those accommodations that do not invalidate the score.</p> <p>(c) <i>Alternate assessments aligned with alternate academic achievement standards for students with the most significant cognitive disabilities.</i></p> <p>(1) If a State has adopted alternate academic achievement standards for children with disabilities who are students with the most significant cognitive disabilities as permitted in section 1111(b)(1)(E) of the ESEA, the State (or, in the case of a district-wide assessment, an LEA) must develop and implement alternate assessments and guidelines for the participation in alternate assessments of those children with disabilities who cannot participate in regular assessments, even with accommodations, as indicated in their respective IEPs, as provided in paragraph (a) of this section.</p> <p>(2) For assessing the academic progress of children with disabilities who are students with the most significant cognitive disabilities under title I of the ESEA, the alternate assessments and guidelines in paragraph (c)(1) of this section must—</p> <p>(i) Be aligned with the challenging State academic content standards under section 1111(b)(1) of the ESEA and alternate academic achievement standards under section 1111(b)(1)(E) of the ESEA; and</p> <p>(ii) Measure the achievement of children with</p>		<p>legal guardian of that response.</p> <p>Last Amended: 84th Leg., R.S., Ch. 1192 (S.B. 1259), Sec. 1, eff. June 19, 2015</p> <p>§ 39.023. Adoption and Administration of Instruments. [Excerpt]</p> <p>...</p> <p>Text of subsection effective on or before September 1, 2015; see note following section for effective date information; effective until September 1, 2017</p> <p>(a) The agency shall adopt or develop appropriate criterion-referenced assessment instruments designed to assess essential knowledge and skills in reading, writing, mathematics, social studies, and science. Except as provided by Subsection (a-2), all students, other than students assessed under Subsection (b) or (l) or exempted under Section 39.027, shall be assessed in:</p> <p>(1) mathematics, in grades three and five without the aid of technology and in grade eight with the aid of technology on any assessment instrument that includes algebra;</p> <p>(2) reading, in grades three, five, and eight;</p> <p>(3) writing, including spelling and grammar, in grades four and seven;</p> <p>(4) social studies, in grade eight; and</p> <p>(5) science, in grades five and eight.</p> <p>Text of subsection effective September 1, 2017; see note following section for effective date information</p> <p>(a) The agency shall adopt or develop appropriate criterion-referenced assessment instruments designed to assess essential knowledge and skills in reading, writing, mathematics, social studies, and science. Except as provided by Subsection (a-2), all students, other than students assessed under Subsection (b) or (l) or exempted under Section 39.027, shall be assessed in:</p> <p>(1) mathematics, annually in grades three through seven without the aid of technology and in grade eight with the aid of technology on any assessment instrument that includes algebra;</p> <p>(2) reading, annually in grades three through eight;</p> <p>(3) writing, including spelling and grammar, in grades four and seven;</p> <p>(4) social studies, in grade eight;</p> <p>(5) science, in grades five and eight; and</p> <p>(6) any other subject and grade required by federal law.</p> <p>...</p>
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<p>disabilities who are students with the most significant cognitive disabilities against those standards.</p> <p>(3) Consistent with section 1111(b)(1)(E)(ii) of the ESEA and 34 CFR 200.6(c)(6), a State may not adopt modified academic achievement standards or any other alternate academic achievement standards that do not meet the requirements in section 1111(b)(1)(E) of the ESEA for any children with disabilities under section 602(3) of the IDEA.</p> <p>(d) <i>Explanation to IEP Teams.</i> A State (or in the case of a district-wide assessment, an LEA) must—</p> <p>(1) Provide to IEP teams a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on alternate academic achievement standards, including any effects of State and local policies on a student's education resulting from taking an alternate assessment aligned with alternate academic achievement standards, such as how participation in such assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma; and</p> <p>(2) Not preclude a student with the most significant cognitive disabilities who takes an alternate assessment aligned with alternate academic achievement standards from attempting to complete the requirements for a regular high school diploma.</p> <p>(e) <i>Inform parents.</i> A State (or in the case of a district-wide assessment, an LEA) must ensure that parents of students selected to be assessed using an alternate assessment aligned with alternate academic achievement standards under the State's guidelines in paragraph (c)(1) of this section are informed, consistent with 34 CFR 200.2(e), that their child's achievement will be measured based on alternate academic achievement standards, and of how participation in such assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma.</p> <p>(f) <i>Reports.</i> An SEA (or, in the case of a district-wide assessment, an LEA) must make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:</p> <p>(1) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations (that did not result in an invalid score) in order to participate in those assessments.</p> <p>(2) The number of children with disabilities, if any, participating in alternate assessments based on grade-level academic achievement standards in school years prior to 2017-2018.</p> <p>(3) The number of children with disabilities, if any,</p>		<p>Text of subsection effective on or before September 1, 2015; see note following section for effective date information</p> <p>(d-1) A student shall be assessed in grade four in a subject for which an assessment instrument is administered under Subsection (a) in grade three if, on the final assessment instrument in that subject administered under Subsection (a) to the student in grade three during the preceding school year, the student did not achieve a score equal to or greater than the minimum satisfactory adjusted scale score for that assessment instrument, as determined under Subsection (a-3).</p> <p>(e-1) A student shall be assessed in grade six in a subject for which an assessment instrument is administered under Subsection (a) in grade five if, on the final assessment instrument in that subject administered under Subsection (a) to the student in grade five during the preceding school year, the student did not achieve a score equal to or greater than the minimum satisfactory adjusted scale score for that assessment instrument, as determined under Subsection (a-3).</p> <p>(f-1) A student shall be assessed in grade seven in a subject for which an assessment instrument was administered under Subsection (a-5) to the student in grade six if, on the final assessment instrument in that subject administered to the student in grade six during the preceding school year, the student did not achieve a score equal to or greater than the minimum satisfactory adjusted scale score for that assessment instrument, as determined under Subsection (a-3).</p> <p>(g-1) A student assessed in mathematics under Subsection (a-4), (a-5), or (a-6) shall be assessed without the aid of technology.</p> <p>(h-1) A school district or open-enrollment charter school may, for its own use in determining whether students are performing at a satisfactory level, administer to a student at the appropriate grade level, other than a student required to be assessed, an assessment instrument developed for purposes of Subsection (a-4), (a-5), or (a-6). At the request of a district or open-enrollment charter school, the agency shall provide, allow for the administration of, and score each assessment instrument administered under this subsection in the same manner and at the same cost as for assessment instruments required to be administered under the applicable subsection. The results of an assessment instrument administered under this subsection may not be included as an indicator of achievement under Section 39.053 or any other provision.</p> <p>...</p> <p>(a-10) This subsection and Subsections (a-3), (a-4), (a-5), (a-6), (a-7), (a-8), and (a-9) expire September 1, 2017.</p> <p>...</p> <p>Text of subsection effective on or before September 1, 2015; see note following section for effective date information; effective until September 1, 2017</p>
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<p>participating in alternate assessments aligned with modified academic achievement standards in school years prior to 2016-2017.</p> <p>(4) The number of children with disabilities who are students with the most significant cognitive disabilities participating in alternate assessments aligned with alternate academic achievement standards.</p> <p>(5) Compared with the achievement of all children, including children with disabilities, the performance results of children with disabilities on regular assessments, alternate assessments based on grade-level academic achievement standards (prior to 2017-2018), alternate assessments based on modified academic achievement standards (prior to 2016-2017), and alternate assessments aligned with alternate academic achievement standards if—</p> <p>(i) The number of children participating in those assessments is sufficient to yield statistically reliable information; and</p> <p>(ii) Reporting that information will not reveal personally identifiable information about an individual student on those assessments.</p> <p>(g) <i>Universal design.</i> An SEA (or, in the case of a district-wide assessment, an LEA) must, to the extent possible, use universal design principles in developing and administering any assessments under this section.</p> <p>(Authority: 20 U.S.C. 1412(a)(16)) Last Amended: 82 FR 29760, June 30, 2017</p>		<p>(b) The agency shall develop or adopt appropriate criterion-referenced alternative assessment instruments to be administered to a student in a special education program under Subchapter A, Chapter 29, for whom an assessment instrument adopted under Subsection (a) or, to the extent applicable, Subsection (a-4), (a-5), or (a-6), even with allowable accommodations, would not provide an appropriate measure of student achievement, as determined by the student's admission, review, and dismissal committee, including assessment instruments approved by the commissioner that measure growth. The assessment instruments developed or adopted under this subsection, including the assessment instruments approved by the commissioner, must, to the extent allowed under federal law, provide a district with options for the assessment of students under this subsection. The agency may not adopt a performance standard that indicates that a student's performance on the alternate assessment does not meet standards if the lowest level of the assessment accurately represents the student's developmental level as determined by the student's admission, review, and dismissal committee.</p> <p>Text of subsection effective September 1, 2017; see note following section for effective date information</p> <p>(b) The agency shall develop or adopt appropriate criterion-referenced alternative assessment instruments to be administered to each student in a special education program under Subchapter A, Chapter 29, for whom an assessment instrument adopted under Subsection (a), even with allowable accommodations, would not provide an appropriate measure of student achievement, as determined by the student's admission, review, and dismissal committee, including assessment instruments approved by the commissioner that measure growth. The assessment instruments developed or adopted under this subsection, including the assessment instruments approved by the commissioner, must, to the extent allowed under federal law, provide a district with options for the assessment of students under this subsection. The agency may not adopt a performance standard that indicates that a student's performance on the alternate assessment does not meet standards if the lowest level of the assessment accurately represents the student's developmental level as determined by the student's admission, review, and dismissal committee.</p> <p>(b-1) The agency, in conjunction with appropriate interested persons, shall redevelop assessment instruments adopted or developed under Subsection (b) for administration to significantly cognitively disabled students in a manner consistent with federal law. An assessment instrument under this subsection may not require a teacher to prepare tasks or materials for a student who will be administered such an assessment instrument. Assessment instruments adopted or developed under this subsection shall be administered not later than the 2014-2015 school year.</p> <p>(c) The agency shall also adopt end-of-course assessment</p>
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		<p>instruments for secondary-level courses in Algebra I, biology, English I, English II, and United States history. The Algebra I end-of-course assessment instrument must be administered with the aid of technology. The English I and English II end-of-course assessment instruments must each assess essential knowledge and skills in both reading and writing in the same assessment instrument and must provide a single score. A school district shall comply with State Board of Education rules regarding administration of the assessment instruments listed in this subsection. If a student is in a special education program under Subchapter A, Chapter 29, the student's admission, review, and dismissal committee shall determine whether any allowable modification is necessary in administering to the student an assessment instrument required under this subsection. The State Board of Education shall administer the assessment instruments. The State Board of Education shall adopt a schedule for the administration of end-of-course assessment instruments that complies with the requirements of Subsection (c-3).</p> <p>...</p> <p>Text of subsection effective on or before September 1, 2015; see note following section for effective date information; effective until September 1, 2017</p> <p>(l) The State Board of Education shall adopt rules for the administration of the assessment instruments adopted under Subsection (a) and, to the extent applicable, the assessment instruments adopted under Subsection (a-4) in Spanish to students in grades three, four, and five who are of limited English proficiency, as defined by Section 29.052, whose primary language is Spanish, and who are not otherwise exempt from the administration of an assessment instrument under Section 39.027(a)(1) or (2). Each student of limited English proficiency whose primary language is Spanish, other than a student to whom Subsection (b) applies, may be assessed using assessment instruments in Spanish under this subsection for up to three years or assessment instruments in English under Subsection (a) and, as applicable, Subsection (a-4). The language proficiency assessment committee established under Section 29.063 shall determine which students are administered assessment instruments in Spanish under this subsection.</p> <p>Text of subsection effective September 1, 2017; see note following section for effective date information</p> <p>(l) The State Board of Education shall adopt rules for the administration of the assessment instruments adopted under Subsection (a) in Spanish to students in grades three through five who are of limited English proficiency, as defined by Section 29.052, whose primary language is Spanish, and who are not otherwise exempt from the administration of an assessment instrument under Section 39.027(a)(1) or (2). Each student of limited English proficiency whose primary language is Spanish, other than a student to whom Subsection (b) applies, may be assessed using assessment instruments in Spanish under this subsection for up to three</p>
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		<p>years or assessment instruments in English under Subsection (a). The language proficiency assessment committee established under Section 29.063 shall determine which students are administered assessment instruments in Spanish under this subsection.</p> <p>...</p> <p>Text of subsection effective on or before September 1, 2015; see note following section for effective date information; effective until September 1, 2017</p> <p>(m) The commissioner by rule shall develop procedures under which the language proficiency assessment committee established under Section 29.063 shall determine which students are exempt from the administration of the assessment instruments under Section 39.027(a)(1) or (2). The rules adopted under this subsection shall ensure that the language proficiency assessment committee provides that the exempted students are administered the assessment instruments under Subsections (a) and (c) and, to the extent applicable, Subsections (a-4), (a-5), and (a-6) at the earliest practical date.</p> <p>Text of subsection effective September 1, 2017; see note following section for effective date information</p> <p>(m) The commissioner by rule shall develop procedures under which the language proficiency assessment committee established under Section 29.063 shall determine which students are exempt from the administration of the assessment instruments under Section 39.027(a)(1) or (2). The rules adopted under this subsection shall ensure that the language proficiency assessment committee provides that the exempted students are administered the assessment instruments under Subsections (a) and (c) at the earliest practical date.</p> <p>...</p> <p>Text of subsection effective on or before September 1, 2015; see note following section for effective date information; effective until September 1, 2017</p> <p>(n) This subsection applies only to a student who is determined to have dyslexia or a related disorder and who is an individual with a disability under 29 U.S.C. Section 705(20) and its subsequent amendments. The agency shall adopt or develop appropriate criterion-referenced assessment instruments designed to assess the ability of and to be administered to each student to whom this subsection applies for whom the assessment instruments adopted under Subsection (a) and, to the extent applicable, the assessment instruments adopted under Subsections (a-4), (a-5), and (a-6), even with allowable modifications, would not provide an appropriate measure of student achievement, as determined by the committee established by the board of trustees of the district to determine the placement of students with dyslexia or related disorders. The committee shall determine whether any allowable modification is necessary in administering to a student an assessment instrument required under this</p>
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<p>§ 300.161 [Reserved]</p> <p>§ 300.162 Supplementation of State, local, and other Federal funds.</p> <p>(a) <i>Expenditures.</i> Funds paid to a State under this part must be expended in accordance with all the provisions of this part.</p> <p>(b) <i>Prohibition against commingling.</i></p> <p>(1) Funds paid to a State under this part must not be commingled with State funds.</p> <p>(2) The requirement in paragraph (b)(1) of this section is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of funds paid to a State under this part. Separate bank accounts are not required. (See 34 CFR 76.702 (Fiscal control and fund accounting procedures).)</p> <p>(c) <i>State-level nonsupplanting.</i></p> <p>(1) Except as provided in §300.203, funds paid to a State under Part B of the Act must be used to supplement the</p>		<p>subsection. The assessment instruments required under this subsection shall be administered on the same schedule as the assessment instruments administered under Subsections (a), (a-4), (a-5), and (a-6), as applicable.</p> <p>Text of subsection effective September 1, 2017; see note following section for effective date information</p> <p>(n) This subsection applies only to a student who is determined to have dyslexia or a related disorder and who is an individual with a disability under 29 U.S.C. Section 705(20) and its subsequent amendments. The agency shall adopt or develop appropriate criterion-referenced assessment instruments designed to assess the ability of and to be administered to each student to whom this subsection applies for whom the assessment instruments adopted under Subsection (a), even with allowable modifications, would not provide an appropriate measure of student achievement, as determined by the committee established by the board of trustees of the district to determine the placement of students with dyslexia or related disorders. The committee shall determine whether any allowable modification is necessary in administering to a student an assessment instrument required under this subsection. The assessment instruments required under this subsection shall be administered on the same schedule as the assessment instruments administered under Subsection (a).</p> <p>...</p> <p>Last Amended:</p> <p>84th Leg., Ch. 934 (H.B. 2349), Sec. 2, eff. June 18, 2015 84th Leg., Ch. 934 (H.B. 2349), Sec. 5(1), eff. June 18, 2015 84th Leg., Ch. 1006 (H.B. 743), Sec. 1, eff. June 19, 2015 84th Leg., Ch. 1094 (H.B. 2804), Sec. 13, eff. June 19, 2015</p>
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<p>level of Federal, State, and local funds (including funds that are not under the direct control of the SEA or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act, and in no case to supplant those Federal, State, and local funds.</p> <p>(2) If the State provides clear and convincing evidence that all children with disabilities have available to them FAPE, the Secretary may waive, in whole or in part, the requirements of paragraph (c)(1) of this section if the Secretary concurs with the evidence provided by the State under §300.164.</p> <p>(Authority: 20 U.S.C. 1412(a)(17)) Last Amended: 72 FR 61306, Oct. 30, 2007</p> <p>§ 300.163 Maintenance of State financial support.</p> <p>(a) <i>General.</i> A State must not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.</p> <p>(b) <i>Reduction of funds for failure to maintain support.</i> The Secretary reduces the allocation of funds under section 611 of the Act for any fiscal year following the fiscal year in which the State fails to comply with the requirement of paragraph (a) of this section by the same amount by which the State fails to meet the requirement.</p> <p>(c) <i>Waivers for exceptional or uncontrollable circumstances.</i> The Secretary may waive the requirement of paragraph (a) of this section for a State, for one fiscal year at a time, if the Secretary determines that—</p> <p>(1) Granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or</p> <p>(2) The State meets the standard in §300.164 for a waiver of the requirement to supplement, and not to supplant, funds received under Part B of the Act.</p> <p>(d) <i>Subsequent years.</i> If, for any fiscal year, a State fails to meet the requirement of paragraph (a) of this section, including any year for which the State is granted a waiver under paragraph (c) of this section, the financial support required of the State in future years under paragraph (a) of this section shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.</p> <p>(Authority: 20 U.S.C. 1412(a)(18)) Last Amended: 71 FR 46773, Aug. 14, 2006</p>		
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§ 300.164 Waiver of requirement regarding supplementing and not supplanting with Part B funds.

- (a) Except as provided under §§300.202 through 300.205, funds paid to a State under Part B of the Act must be used to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of SEAs or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act and in no case to supplant those Federal, State, and local funds. A State may use funds it retains under §300.704(a) and (b) without regard to the prohibition on supplanting other funds.
- (b) If a State provides clear and convincing evidence that all eligible children with disabilities throughout the State have FAPE available to them, the Secretary may waive for a period of one year in whole or in part the requirement under §300.162 (regarding State-level nonsupplanting) if the Secretary concurs with the evidence provided by the State.
- (c) If a State wishes to request a waiver under this section, it must submit to the Secretary a written request that includes—
 - (1) An assurance that FAPE is currently available, and will remain available throughout the period that a waiver would be in effect, to all eligible children with disabilities throughout the State, regardless of the public agency that is responsible for providing FAPE to them. The assurance must be signed by an official who has the authority to provide that assurance as it applies to all eligible children with disabilities in the State;
 - (2) All evidence that the State wishes the Secretary to consider in determining whether all eligible children with disabilities have FAPE available to them, setting forth in detail—
 - (i) The basis on which the State has concluded that FAPE is available to all eligible children in the State; and
 - (ii) The procedures that the State will implement to ensure that FAPE remains available to all eligible children in the State, which must include—
 - (A) The State's procedures under §300.111 for ensuring that all eligible children are identified, located and evaluated;
 - (B) The State's procedures for monitoring public agencies to ensure that they comply with all requirements of this part;
 - (C) The State's complaint procedures under §§300.151 through 300.153; and
 - (D) The State's hearing procedures under §§300.511 through 300.516 and §§300.530 through 300.536;
 - (3) A summary of all State and Federal monitoring reports, and State complaint decisions (see §§300.151 through 300.153) and hearing decisions (see §§300.511 through

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<p>300.516 and §§300.530 through 300.536), issued within three years prior to the date of the State's request for a waiver under this section, that includes any finding that FAPE has not been available to one or more eligible children, and evidence that FAPE is now available to all children addressed in those reports or decisions; and</p> <p>(4) Evidence that the State, in determining that FAPE is currently available to all eligible children with disabilities in the State, has consulted with the State advisory panel under §300.167.</p> <p>(d) If the Secretary determines that the request and supporting evidence submitted by the State makes a prima facie showing that FAPE is, and will remain, available to all eligible children with disabilities in the State, the Secretary, after notice to the public throughout the State, conducts a public hearing at which all interested persons and organizations may present evidence regarding the following issues:</p> <p>(1) Whether FAPE is currently available to all eligible children with disabilities in the State.</p> <p>(2) Whether the State will be able to ensure that FAPE remains available to all eligible children with disabilities in the State if the Secretary provides the requested waiver.</p> <p>(e) Following the hearing, the Secretary, based on all submitted evidence, will provide a waiver, in whole or in part, for a period of one year if the Secretary finds that the State has provided clear and convincing evidence that FAPE is currently available to all eligible children with disabilities in the State, and the State will be able to ensure that FAPE remains available to all eligible children with disabilities in the State if the Secretary provides the requested waiver.</p> <p>(f) A State may receive a waiver of the requirement of section 612(a)(18)(A) of the Act and §300.164 if it satisfies the requirements of paragraphs (b) through I of this section.</p> <p>(g) The Secretary may grant subsequent waivers for a period of one year each, if the Secretary determines that the State has provided clear and convincing evidence that all eligible children with disabilities throughout the State have, and will continue to have throughout the one-year period of the waiver, FAPE available to them.</p> <p>(Authority: 20 U.S.C. 1412(a)(17)(C), (18)(C)(ii)) Last Amended: 71 FR 46773, Aug. 14, 2006</p> <p>§ 300.165 Public participation.</p> <p>(a) Prior to the adoption of any policies and procedures needed to comply with Part B of the Act (including any amendments to those policies and procedures), the State must ensure that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.</p> <p>(b) Before submitting a State plan under this part, a State must</p>		
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<p>comply with the public participation requirements in paragraph (a) of this section and those in 20 U.S.C. 1232d(b)(7). (Authority: 20 U.S.C. 1412(a)(19); 20 U.S.C. 1232d(b)(7)) Last Amended: 71 FR 46774, Aug. 14, 2006</p> <p>§ 300.166 Rule of construction. In complying with §§300.162 and 300.163, a State may not use funds paid to it under this part to satisfy State-law mandated funding obligations to LEAs, including funding based on student attendance or enrollment, or inflation. (Authority: 20 U.S.C. 1412(a)(20)) Last Amended: 71 FR 46774, Aug. 14, 2006</p> <p>State Advisory Panel</p> <p>§ 300.167 State advisory panel. The State must establish and maintain an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State. (Authority: 20 U.S.C. 1412(a)(21)(A)) Last Amended: 71 FR 46774, Aug. 14, 2006</p> <p>§ 300.168 Membership.</p> <p>(a) <i>General.</i> The advisory panel must consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, be representative of the State population and be composed of individuals involved in, or concerned with the education of children with disabilities, including—</p> <ol style="list-style-type: none"> (1) Parents of children with disabilities (ages birth through 26); (2) Individuals with disabilities; (3) Teachers; (4) Representatives of institutions of higher education that prepare special education and related services personnel; (5) State and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act, (42 U.S.C. 11431 <i>et seq.</i>); (6) Administrators of programs for children with disabilities; (7) Representatives of other State agencies involved in the financing or delivery of related services to children with disabilities; 		
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<p>(8) Representatives of private schools and public charter schools;</p> <p>(9) Not less than one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;</p> <p>(10) A representative from the State child welfare agency responsible for foster care; and</p> <p>(11) Representatives from the State juvenile and adult corrections agencies.</p> <p>(b) <i>Special rule.</i> A majority of the members of the panel must be individuals with disabilities or parents of children with disabilities (ages birth through 26).</p> <p>(Authority: 20 U.S.C. 1412(a)(21)(B) and (C)) Last Amended: 71 FR 46774, Aug. 14, 2006</p> <p>§ 300.169 Duties. The advisory panel must—</p> <p>(a) Advise the SEA of unmet needs within the State in the education of children with disabilities;</p> <p>(b) Comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;</p> <p>(c) Advise the SEA in developing evaluations and reporting on data to the Secretary under section 618 of the Act;</p> <p>(d) Advise the SEA in developing corrective action plans to address findings identified in Federal monitoring reports under Part B of the Act; and</p> <p>(e) Advise the SEA in developing and implementing policies relating to the coordination of services for children with disabilities.</p> <p>(Authority: 20 U.S.C. 1412(a)(21)(D)) Last Amended: 71 FR 46774, Aug. 14, 2006</p> <p>Other Provisions Required for State Eligibility</p> <p>§ 300.170 Suspension and expulsion rates.</p> <p>(a) <i>General.</i> The SEA must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities—</p> <ol style="list-style-type: none"> (1) Among LEAs in the State; or (2) Compared to the rates for nondisabled children within those agencies. <p>(b) <i>Review and revision of policies.</i> If the discrepancies described in paragraph (a) of this section are occurring, the SEA must review and, if appropriate, revise (or require the</p>		
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<p>affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act.</p> <p>(Authority: 20 U.S.C. 1412(a)(22)) Last Amended: 71 FR 46774, Aug. 14, 2006</p> <p>§ 300.171 Annual description of use of Part B funds.</p> <p>(a) In order to receive a grant in any fiscal year a State must annually describe—</p> <ol style="list-style-type: none"> (1) How amounts retained for State administration and State-level activities under §300.704 will be used to meet the requirements of this part; and (2) How those amounts will be allocated among the activities described in §300.704 to meet State priorities based on input from LEAs. <p>(b) If a State's plans for use of its funds under §300.704 for the forthcoming year do not change from the prior year, the State may submit a letter to that effect to meet the requirement in paragraph (a) of this section.</p> <p>(c) The provisions of this section do not apply to the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the freely associated States.</p> <p>(Authority: 20 U.S.C. 1411(5)) Last Amended: 71 FR 46775, Aug. 14, 2006</p> <p>§ 300.172 Access to instructional materials.</p> <p>(a) <i>General.</i> The State must—</p> <ol style="list-style-type: none"> (1) Adopt the National Instructional Materials Accessibility Standard (NIMAS), published as appendix C to part 300, for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after publication of the NIMAS in the Federal Register on July 19, 2006 (71 FR 41084); and (2) Establish a State definition of "timely manner" for purposes of paragraphs (b)(2) and (b)(3) of this section if the State is not coordinating with the National Instructional Materials Access Center (NIMAC) or (b)(3) and (c)(2) of this section if the State is coordinating with the NIMAC. <p>(b) <i>Rights and responsibilities of SEA.</i></p> <ol style="list-style-type: none"> (1) Nothing in this section shall be construed to require any SEA to coordinate with the NIMAC. (2) If an SEA chooses not to coordinate with the NIMAC, the SEA must provide an assurance to the Secretary that it will provide instructional materials to blind persons or other persons with print disabilities in a 		
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<p>timely manner.</p> <p>(3) Nothing in this section relieves an SEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats, but are not included under the definition of blind or other persons with print disabilities in §300.172(e)(1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.</p> <p>(4) In order to meet its responsibility under paragraphs (b)(2), (b)(3), and (c) of this section to ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner, the SEA must ensure that all public agencies take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials.</p> <p>(c) <i>Preparation and delivery of files.</i> If an SEA chooses to coordinate with the NIMAC, as of December 3, 2006, the SEA must—</p> <p>(1) As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, enter into a written contract with the publisher of the print instructional materials to—</p> <p>(i) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or</p> <p>(ii) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.</p> <p>(2) Provide instructional materials to blind persons or other persons with print disabilities in a timely manner.</p> <p>(d) <i>Assistive technology.</i> In carrying out this section, the SEA, to the maximum extent possible, must work collaboratively with the State agency responsible for assistive technology programs.</p> <p>(e) <i>Definitions.</i></p> <p>(1) In this section and §300.210—</p> <p>(i) <i>Blind persons or other persons with print disabilities</i> means children served under this part who may qualify to receive books and other publications produced in specialized formats in accordance with the Act entitled “An Act to provide books for adult blind,” approved March 3, 1931, 2 U.S.C. 135a;</p> <p>(ii) <i>National Instructional Materials Access Center or NIMAC</i> means the center established pursuant to</p>		
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section 674(e) of the Act;

- (iii) *National Instructional Materials Accessibility Standard* or *NIMAS* has the meaning given the term in section 674(e)(3)(B) of the Act;
- (iv) *Specialized formats* has the meaning given the term in section 674(e)(3)(D) of the Act.

(2) The definitions in paragraph (e)(1) of this section apply to each State and LEA, whether or not the State or LEA chooses to coordinate with the NIMAC.

(Authority: 20 U.S.C. 1412(a)(23), 1474(e))
Last Amended: 72 FR 61306, Oct. 30, 2007

§ 300.173 Overidentification and disproportionality.
The State must have in effect, consistent with the purposes of this part and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in §300.8.
(Authority: 20 U.S.C. 1412(a)(24))
Last Amended: 71 FR 46775, Aug. 14, 2006

§ 300.174 Prohibition on mandatory medication.
(a) *General.* The SEA must prohibit State and LEA personnel from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for a child as a condition of attending school, receiving an evaluation under §§300.300 through 300.311, or receiving services under this part.
(b) *Rule of construction.* Nothing in paragraph (a) of this section shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under §300.111 (related to child find).
(Authority: 20 U.S.C. 1412(a)(25))
Last Amended: 71 FR 46775, Aug. 14, 2006

§ 38.016. Psychotropic Drugs and Psychiatric Evaluations or Examinations.
(a) In this section:
(1) "Parent" includes a guardian or other person standing in parental relation.
(2) "Psychotropic drug" means a substance that is:
(A) used in the diagnosis, treatment, or prevention of a disease or as a component of a medication; and
(B) intended to have an altering effect on perception, emotion, or behavior.
(b) A school district employee may not:
(1) recommend that a student use a psychotropic drug; or
(2) suggest any particular diagnosis; or
(3) use the refusal by a parent to consent to administration of a psychotropic drug to a student or to a psychiatric evaluation or examination of a student as grounds, by itself, for prohibiting the child from attending a class or participating in a school-related activity.
(c) Subsection (b) does not:
(1) prevent an appropriate referral under the child find system required under 20 U.S.C. Section 1412, as amended; or
(2) prohibit a school district employee who is a registered nurse, advanced nurse practitioner, physician, or certified or appropriately credentialed mental health professional from recommending that a child be

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<p>§ 300.175 SEA as provider of FAPE or direct services. If the SEA provides FAPE to children with disabilities, or provides direct services to these children, the agency—</p> <ul style="list-style-type: none"> (a) Must comply with any additional requirements of §§300.201 and 300.202 and §§300.206 through 300.226 as if the agency were an LEA; and (b) May use amounts that are otherwise available to the agency under Part B of the Act to serve those children without regard to §300.202(b) (relating to excess costs). <p>(Authority: 20 U.S.C. 1412(b)) Last Amended: 71 FR 46775, Aug. 14, 2006</p> <p>§ 300.176 Exception for prior State plans.</p> <ul style="list-style-type: none"> (a) <i>General.</i> If a State has on file with the Secretary policies and procedures approved by the Secretary that demonstrate that the State meets any requirement of §300.100, including any policies and procedures filed under Part B of the Act as in effect before, December 3, 2004, the Secretary considers the State to have met the requirement for purposes of receiving a grant under Part B of the Act. (b) <i>Modifications made by a State.</i> <ul style="list-style-type: none"> (1) Subject to paragraph (b)(2) of this section, policies and procedures submitted by a State in accordance with this subpart remain in effect until the State submits to the Secretary the modifications that the State determines necessary. (2) The provisions of this subpart apply to a modification to an application to the same extent and in the same manner that they apply to the original plan. (c) <i>Modifications required by the Secretary.</i> The Secretary may require a State to modify its policies and procedures, but only to the extent necessary to ensure the State's compliance with this part, if— <ul style="list-style-type: none"> (1) After December 3, 2004, the provisions of the Act or the regulations in this part are amended; 		<p>evaluated by an appropriate medical practitioner; or</p> <ul style="list-style-type: none"> (3) prohibit a school employee from discussing any aspect of a child's behavior or academic progress with the child's parent or another school district employee. (d) The board of trustees of each school district shall adopt a policy to ensure implementation and enforcement of this section. (e) An act in violation of Subsection (b) does not override the immunity from personal liability granted in Section 22.0511 or other law or the district's sovereign and governmental immunity. <p>Last Amended: 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 4.008, eff. September 1, 2007</p>
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<p>(2) There is a new interpretation of this Act by a Federal court or a State's highest court; or</p> <p>(3) There is an official finding of noncompliance with Federal law or regulations.</p> <p>(Authority: 20 U.S.C. 1412(2) and (3)) Last Amended: 71 FR 46776, Aug. 14, 2006</p> <p>§ 300.177 States' sovereign immunity and positive efforts to employ and advance qualified individuals with disabilities.</p> <p>(a) <i>States' sovereign immunity.</i></p> <p>(1) A State that accepts funds under this part waives its immunity under the 11th amendment of the Constitution of the United States from suit in Federal court for a violation of this part.</p> <p>(2) In a suit against a State for a violation of this part, remedies (including remedies both at law and in equity) are available for such a violation in the suit against any public entity other than a State.</p> <p>(3) Paragraphs (a)(1) and (a)(2) of this section apply with respect to violations that occur in whole or part after the date of enactment of the Education of the Handicapped Act Amendments of 1990.</p> <p>(b) <i>Positive efforts to employ and advance qualified individuals with disabilities.</i> Each recipient of assistance under Part B of the Act must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the Act.</p> <p>(Authority: 20 U.S.C. 1403, 1405) Last Amended: 73 FR 73027, Dec.1, 2008</p> <p>Department Procedures</p> <p>§ 300.178 Determination by the Secretary that a State is eligible to receive a grant.</p> <p>If the Secretary determines that a State is eligible to receive a grant under Part B of the Act, the Secretary notifies the State of that determination.</p> <p>(Authority: 20 U.S.C. 1412(d)(1)) Last Amended: 71 FR 46776, Aug. 14, 2006</p> <p>§ 300.179 Notice and hearing before determining that a State is not eligible to receive a grant.</p> <p>(a) <i>General.</i></p> <p>(1) The Secretary does not make a final determination that a State is not eligible to receive a grant under Part B of the Act until providing the State—</p> <p>(i) With reasonable notice; and</p>		
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<p>(ii) With an opportunity for a hearing.</p> <p>(2) In implementing paragraph (a)(1)(i) of this section, the Secretary sends a written notice to the SEA by certified mail with return receipt requested.</p> <p>(b) <i>Content of notice.</i> In the written notice described in paragraph (a)(2) of this section, the Secretary—</p> <p>(1) States the basis on which the Secretary proposes to make a final determination that the State is not eligible;</p> <p>(2) May describe possible options for resolving the issues;</p> <p>(3) Advises the SEA that it may request a hearing and that the request for a hearing must be made not later than 30 days after it receives the notice of the proposed final determination that the State is not eligible; and</p> <p>(4) Provides the SEA with information about the hearing procedures that will be followed.</p> <p>(Authority: 20 U.S.C. 1412(d)(2)) Last Amended: 71 FR 46776, Aug. 14, 2006</p> <p>§ 300.180 Hearing official or panel.</p> <p>(a) If the SEA requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this program, to conduct a hearing.</p> <p>(b) If more than one individual is designated, the Secretary designates one of those individuals as the Chief Hearing Official of the Hearing Panel. If one individual is designated, that individual is the Hearing Official.</p> <p>(Authority: 20 U.S.C. 1412(d)(2)) Last Amended: 71 FR 46776, Aug. 14, 2006</p> <p>§ 300.181 Hearing procedures.</p> <p>(a) As used in §§300.179 through 300.184 the term party or parties means the following:</p> <p>(1) An SEA that requests a hearing regarding the proposed disapproval of the State's eligibility under this part.</p> <p>(2) The Department official who administers the program of financial assistance under this part.</p> <p>(3) A person, group or agency with an interest in and having relevant information about the case that has applied for and been granted leave to intervene by the Hearing Official or Hearing Panel.</p> <p>(b) Within 15 days after receiving a request for a hearing, the Secretary designates a Hearing Official or Hearing Panel and notifies the parties.</p> <p>(c) The Hearing Official or Hearing Panel may regulate the course of proceedings and the conduct of the parties during the proceedings. The Hearing Official or Hearing Panel takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order, including</p>		
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<p>the following:</p> <ol style="list-style-type: none"> (1) The Hearing Official or Hearing Panel may hold conferences or other types of appropriate proceedings to clarify, simplify, or define the issues or to consider other matters that may aid in the disposition of the case. (2) The Hearing Official or Hearing Panel may schedule a prehearing conference with the Hearing Official or Hearing Panel and the parties. (3) Any party may request the Hearing Official or Hearing Panel to schedule a prehearing or other conference. The Hearing Official or Hearing Panel decides whether a conference is necessary and notifies all parties. (4) At a prehearing or other conference, the Hearing Official or Hearing Panel and the parties may consider subjects such as— <ol style="list-style-type: none"> (i) Narrowing and clarifying issues; (ii) Assisting the parties in reaching agreements and stipulations; (iii) Clarifying the positions of the parties; (iv) Determining whether an evidentiary hearing or oral argument should be held; and (v) Setting dates for— <ol style="list-style-type: none"> (A) The exchange of written documents; (B) The receipt of comments from the parties on the need for oral argument or evidentiary hearing; (C) Further proceedings before the Hearing Official or Hearing Panel (including an evidentiary hearing or oral argument, if either is scheduled); (D) Requesting the names of witnesses each party wishes to present at an evidentiary hearing and estimation of time for each presentation; or (E) Completion of the review and the initial decision of the Hearing Official or Hearing Panel. (5) A prehearing or other conference held under paragraph (c)(4) of this section may be conducted by telephone conference call. (6) At a prehearing or other conference, the parties must be prepared to discuss the subjects listed in paragraph (b)(4) of this section. (7) Following a prehearing or other conference the Hearing Official or Hearing Panel may issue a written statement describing the issues raised, the action taken, and the stipulations and agreements reached by the parties. (d) The Hearing Official or Hearing Panel may require parties to state their positions and to provide all or part of the evidence in writing. 		
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<ul style="list-style-type: none"> (e) The Hearing Official or Hearing Panel may require parties to present testimony through affidavits and to conduct cross-examination through interrogatories. (f) The Hearing Official or Hearing Panel may direct the parties to exchange relevant documents or information and lists of witnesses, and to send copies to the Hearing Official or Panel. (g) The Hearing Official or Hearing Panel may receive, rule on, exclude, or limit evidence at any stage of the proceedings. (h) The Hearing Official or Hearing Panel may rule on motions and other issues at any stage of the proceedings. (i) The Hearing Official or Hearing Panel may examine witnesses. (j) The Hearing Official or Hearing Panel may set reasonable time limits for submission of written documents. (k) The Hearing Official or Hearing Panel may refuse to consider documents or other submissions if they are not submitted in a timely manner unless good cause is shown. (l) The Hearing Official or Hearing Panel may interpret applicable statutes and regulations but may not waive them or rule on their validity. (m) <ul style="list-style-type: none"> (1) The parties must present their positions through briefs and the submission of other documents and may request an oral argument or evidentiary hearing. The Hearing Official or Hearing Panel shall determine whether an oral argument or an evidentiary hearing is needed to clarify the positions of the parties. (2) The Hearing Official or Hearing Panel gives each party an opportunity to be represented by counsel. (n) If the Hearing Official or Hearing Panel determines that an evidentiary hearing would materially assist the resolution of the matter, the Hearing Official or Hearing Panel gives each party, in addition to the opportunity to be represented by counsel— <ul style="list-style-type: none"> (1) An opportunity to present witnesses on the party's behalf; and (2) An opportunity to cross-examine witnesses either orally or with written questions. (o) The Hearing Official or Hearing Panel accepts any evidence that it finds is relevant and material to the proceedings and is not unduly repetitious. (p) <ul style="list-style-type: none"> (1) The Hearing Official or Hearing Panel— <ul style="list-style-type: none"> (i) Arranges for the preparation of a transcript of each hearing; (ii) Retains the original transcript as part of the record of the hearing; and (iii) Provides one copy of the transcript to each party. (2) Additional copies of the transcript are available on request and with payment of the reproduction fee. (q) Each party must file with the Hearing Official or Hearing Panel all written motions, briefs, and other documents and 		
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<p>must at the same time provide a copy to the other parties to the proceedings. (Authority: 20 U.S.C. 1412(d)(2)) Last Amended: 72 FR 61306, Oct. 30, 2007</p> <p>§ 300.182 Initial decision; final decision.</p> <ul style="list-style-type: none"> (a) The Hearing Official or Hearing Panel prepares an initial written decision that addresses each of the points in the notice sent by the Secretary to the SEA under §300.179 including any amendments to or further clarifications of the issues, under §300.181(c)(7). (b) The initial decision of a Hearing Panel is made by a majority of Panel members. (c) The Hearing Official or Hearing Panel mails, by certified mail with return receipt requested, a copy of the initial decision to each party (or to the party's counsel) and to the Secretary, with a notice stating that each party has an opportunity to submit written comments regarding the decision to the Secretary. (d) Each party may file comments and recommendations on the initial decision with the Hearing Official or Hearing Panel within 15 days of the date the party receives the Panel's decision. (e) The Hearing Official or Hearing Panel sends a copy of a party's initial comments and recommendations to the other parties by certified mail with return receipt requested. Each party may file responsive comments and recommendations with the Hearing Official or Hearing Panel within seven days of the date the party receives the initial comments and recommendations. (f) The Hearing Official or Hearing Panel forwards the parties' initial and responsive comments on the initial decision to the Secretary who reviews the initial decision and issues a final decision. (g) The initial decision of the Hearing Official or Hearing Panel becomes the final decision of the Secretary unless, within 25 days after the end of the time for receipt of written comments and recommendations, the Secretary informs the Hearing Official or Hearing Panel and the parties to a hearing in writing that the decision is being further reviewed for possible modification. (h) The Secretary rejects or modifies the initial decision of the Hearing Official or Hearing Panel if the Secretary finds that it is clearly erroneous. (i) The Secretary conducts the review based on the initial decision, the written record, the transcript of the Hearing Official's or Hearing Panel's proceedings, and written comments. (j) The Secretary may remand the matter to the Hearing Official or Hearing Panel for further proceedings. (k) Unless the Secretary remands the matter as provided in paragraph (j) of this section, the Secretary issues the final 		
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decision, with any necessary modifications, within 30 days after notifying the Hearing Official or Hearing Panel that the initial decision is being further reviewed.

(Authority: 20 U.S.C. 1412(d)(2))

Last Amended: 71 FR 46777, Aug. 14, 2006

§ 300.183 Filing requirements.

- (a) Any written submission by a party under §§300.179 through 300.184 must be filed by hand delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages.
- (b) The filing date under paragraph (a) of this section is the date the document is—
 - (1) Hand-delivered;
 - (2) Mailed; or
 - (3) Sent by facsimile transmission.
- (c) A party filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Department.
- (d) If a document is filed by facsimile transmission, the Secretary, the Hearing Official, or the Hearing Panel, as applicable, may require the filing of a follow-up hard copy by hand delivery or by mail within a reasonable period of time.
- (e) If agreed upon by the parties, service of a document may be made upon the other party by facsimile transmission.

(Authority: 20 U.S.C. 1412(d))

Last Amended: 71 FR 46777, Aug. 14, 2006

§ 300.184 Judicial review.

If a State is dissatisfied with the Secretary's final decision with respect to the eligibility of the State under section 612 of the Act, the State may, not later than 60 days after notice of that decision, file with the United States Court of Appeals for the circuit in which that State is located a petition for review of that decision. A copy of the petition must be transmitted by the clerk of the court to the Secretary. The Secretary then files in the court the record of the proceedings upon which the Secretary's decision was based, as provided in 28 U.S.C. 2112.

(Authority: 20 U.S.C. 1416l(8))

Last Amended: 71 FR 46778, Aug. 14, 2006

§ 300.185 [Reserved]

§ 300.186 Assistance under other Federal programs.

Part B of the Act may not be construed to permit a State to reduce medical and other assistance available, or to alter eligibility, under titles V and XIX of the Social Security Act with

<p>respect to the provision of FAPE for children with disabilities in the State. (Authority: 20 U.S.C. 1412I) Last Amended: 71 FR 46778, Aug. 14, 2006</p> <p>By-pass for Children in Private Schools</p> <p>§ 300.190 By-pass—general.</p> <p>(a) If, on December 2, 1983, the date of enactment of the Education of the Handicapped Act Amendments of 1983, an SEA was prohibited by law from providing for the equitable participation in special programs of children with disabilities enrolled in private elementary schools and secondary schools as required by section 612(a)(10)(A) of the Act, or if the Secretary determines that an SEA, LEA, or other public agency has substantially failed or is unwilling to provide for such equitable participation then the Secretary shall, notwithstanding such provision of law, arrange for the provision of services to these children through arrangements which shall be subject to the requirements of section 612(a)(10)(A) of the Act.</p> <p>(b) The Secretary waives the requirement of section 612(a)(10)(A) of the Act and of §§300.131 through 300.144 if the Secretary implements a by-pass.</p> <p>(Authority: 20 U.S.C. 1412(f)(1)) Last Amended: 71 FR 46778, Aug. 14, 2006</p> <p>§ 300.191 Provisions for services under a by-pass.</p> <p>(a) Before implementing a by-pass, the Secretary consults with appropriate public and private school officials, including SEA officials, in the affected State, and as appropriate, LEA or other public agency officials to consider matters such as—</p> <ol style="list-style-type: none"> (1) Any prohibition imposed by State law that results in the need for a by-pass; and (2) The scope and nature of the services required by private school children with disabilities in the State, and the number of children to be served under the by-pass. <p>(b) After determining that a by-pass is required, the Secretary arranges for the provision of services to private school children with disabilities in the State, LEA or other public agency in a manner consistent with the requirements of section 612(a)(10)(A) of the Act and §§300.131 through 300.144 by providing services through one or more agreements with appropriate parties.</p> <p>(c) For any fiscal year that a by-pass is implemented, the Secretary determines the maximum amount to be paid to the providers of services by multiplying—</p> <ol style="list-style-type: none"> (1) A per child amount determined by dividing the total amount received by the State under Part B of the Act for 		
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<p>the fiscal year by the number of children with disabilities served in the prior year as reported to the Secretary under section 618 of the Act; by</p> <p>(2) The number of private school children with disabilities (as defined in §§300.8(a) and 300.130) in the State, LEA or other public agency, as determined by the Secretary on the basis of the most recent satisfactory data available, which may include an estimate of the number of those children with disabilities.</p> <p>(d) The Secretary deducts from the State's allocation under Part B of the Act the amount the Secretary determines is necessary to implement a by-pass and pays that amount to the provider of services. The Secretary may withhold this amount from the State's allocation pending final resolution of any investigation or complaint that could result in a determination that a by-pass must be implemented.</p> <p>(Authority: 20 U.S.C. 1412(f)(2)) Last Amended: 71 FR 46778, Aug. 14, 2006</p> <p>§ 300.192 Notice of intent to implement a by-pass.</p> <p>(a) Before taking any final action to implement a by-pass, the Secretary provides the SEA and, as appropriate, LEA or other public agency with written notice.</p> <p>(b) In the written notice, the Secretary—</p> <p>(1) States the reasons for the proposed by-pass in sufficient detail to allow the SEA and, as appropriate, LEA or other public agency to respond; and</p> <p>(2) Advises the SEA and, as appropriate, LEA or other public agency that it has a specific period of time (at least 45 days) from receipt of the written notice to submit written objections to the proposed by-pass and that it may request in writing the opportunity for a hearing to show cause why a by-pass should not be implemented.</p> <p>(c) The Secretary sends the notice to the SEA and, as appropriate, LEA or other public agency by certified mail with return receipt requested.</p> <p>(Authority: 20 U.S.C. 1412(f)(3)(A)) Last Amended: 71 FR 46778, Aug. 14, 2006</p> <p>§ 300.193 Request to show cause.</p> <p>An SEA, LEA or other public agency in receipt of a notice under §300.192 that seeks an opportunity to show cause why a by-pass should not be implemented must submit a written request for a show cause hearing to the Secretary, within the specified time period in the written notice in §300.192(b)(2).</p> <p>(Authority: 20 U.S.C. 1412(f)(3)) Last Amended: 71 FR 46778, Aug. 14, 2006</p>		
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<p>§ 300.194 Show cause hearing.</p> <p>(a) If a show cause hearing is requested, the Secretary—</p> <ol style="list-style-type: none"> (1) Notifies the SEA and affected LEA or other public agency, and other appropriate public and private school officials of the time and place for the hearing; (2) Designates a person to conduct the show cause hearing. The designee must not have had any responsibility for the matter brought for a hearing; and (3) Notifies the SEA, LEA or other public agency, and representatives of private schools that they may be represented by legal counsel and submit oral or written evidence and arguments at the hearing. <p>(b) At the show cause hearing, the designee considers matters such as—</p> <ol style="list-style-type: none"> (1) The necessity for implementing a by-pass; (2) Possible factual errors in the written notice of intent to implement a by-pass; and (3) The objections raised by public and private school representatives. <p>(c) The designee may regulate the course of the proceedings and the conduct of parties during the pendency of the proceedings. The designee takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order.</p> <p>(d) The designee has no authority to require or conduct discovery.</p> <p>(e) The designee may interpret applicable statutes and regulations, but may not waive them or rule on their validity.</p> <p>(f) The designee arranges for the preparation, retention, and, if appropriate, dissemination of the record of the hearing.</p> <p>(g) Within 10 days after the hearing, the designee—</p> <ol style="list-style-type: none"> (1) Indicates that a decision will be issued on the basis of the existing record; or (2) Requests further information from the SEA, LEA, other public agency, representatives of private schools or Department officials. <p>(Authority: 20 U.S.C. 1412(f)(3)) Last Amended: 71 FR 46778, Aug. 14, 2006</p> <p>§ 300.195 Decision.</p> <p>(a) The designee who conducts the show cause hearing—</p> <ol style="list-style-type: none"> (1) Within 120 days after the record of a show cause hearing is closed, issues a written decision that includes a statement of findings; and (2) Submits a copy of the decision to the Secretary and sends a copy to each party by certified mail with return receipt requested. <p>(b) Each party may submit comments and recommendations on the designee's decision to the Secretary within 30 days of the</p>		
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<p>date the party receives the designee's decision.</p> <p>(c) The Secretary adopts, reverses, or modifies the designee's decision and notifies all parties to the show cause hearing of the Secretary's final action. That notice is sent by certified mail with return receipt requested.</p> <p>(Authority: 20 U.S.C. 1412(f)(3)) Last Amended: 71 FR 46779, Aug. 14, 2006</p> <p>§ 300.196 Filing requirements.</p> <p>(a) Any written submission under §300.194 must be filed by hand-delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages.</p> <p>(b) The filing date under paragraph (a) of this section is the date the document is—</p> <ul style="list-style-type: none">(1) Hand-delivered;(2) Mailed; or(3) Sent by facsimile transmission. <p>(c) A party filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Department.</p> <p>(d) If a document is filed by facsimile transmission, the Secretary or the hearing officer, as applicable, may require the filing of a follow-up hard copy by hand-delivery or by mail within a reasonable period of time.</p> <p>(e) If agreed upon by the parties, service of a document may be made upon the other party by facsimile transmission.</p> <p>(f) A party must show a proof of mailing to establish the filing date under paragraph (b)(2) of this section as provided in 34 CFR 75.102(d).</p> <p>(Authority: 20 U.S.C. 1412(f)(3)) Last Amended: 71 FR 46779, Aug. 14, 2006</p> <p>§ 300.197 Judicial review.</p> <p>If dissatisfied with the Secretary's final action, the SEA may, within 60 days after notice of that action, file a petition for review with the United States Court of Appeals for the circuit in which the State is located. The procedures for judicial review are described in section 612(f)(3) (B) through (D) of the Act.</p> <p>(Authority: 20 U.S.C. 1412(f)(3)(B)–(D)) Last Amended: 71 FR 46779, Aug. 14, 2006</p> <p>§ 300.198 Continuation of a by-pass.</p> <p>The Secretary continues a by-pass until the Secretary determines that the SEA, LEA or other public agency will meet the requirements for providing services to private school children.</p>		
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<p>(Authority: 20 U.S.C. 1412(f)(2)(C)) Last Amended: 71 FR 46779, Aug. 14, 2006</p> <p>State Administration</p> <p>§ 300.199 State administration.</p> <p>(a) <i>Rulemaking.</i> Each State that receives funds under Part B of the Act must—</p> <ol style="list-style-type: none"> (1) Ensure that any State rules, regulations, and policies relating to this part conform to the purposes of this part; (2) Identify in writing to LEAs located in the State and the Secretary any such rule, regulation, or policy as a State-imposed requirement that is not required by Part B of the Act and Federal regulations; and (3) Minimize the number of rules, regulations, and policies to which the LEAs and schools located in the State are subject under Part B of the Act. <p>(b) <i>Support and facilitation.</i> State rules, regulations, and policies under Part B of the Act must support and facilitate LEA and school-level system improvement designed to enable children with disabilities to meet the challenging State student academic achievement standards.</p> <p>(Authority: 20 U.S.C. 1407) Last Amended: 71 FR 46779, Aug. 14, 2006</p>		
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Subpart C Local Educational Agency Eligibility	Texas Administrative Code	Texas Education Code
<p>§ 300.200 Condition of assistance. An LEA is eligible for assistance under Part B of the Act for a fiscal year if the agency submits a plan that provides assurances to the SEA that the LEA meets each of the conditions in §§300.201 through 300.213. (Authority: 20 U.S.C. 1413(a)) Last Amended: 71 FR 46779, Aug. 14, 2006</p> <p>§ 300.201 Consistency with State policies. The LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under §§300.101 through 300.163, and §§300.165 through 300.174. (Authority: 20 U.S.C. 1413(a)(1)) Last Amended: 71 FR 46779, Aug. 14, 2006</p> <p>§ 300.202 Use of amounts. (a) <i>General.</i> Amounts provided to the LEA under Part B of the Act— (1) Must be expended in accordance with the applicable provisions of this part; (2) Must be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with paragraph (b) of this section; and (3) Must be used to supplement State, local, and other Federal funds and not to supplant those funds. (b) <i>Excess cost requirement—</i> (1) <i>General.</i> (i) The excess cost requirement prevents an LEA from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a child with a disability, subject to paragraph (b)(1)(ii) of this section. (ii) The excess cost requirement does not prevent an LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child</p>	<p>§ 89.1075. General Program Requirements and Local District Procedures. [Excerpt] . . . (b) For school districts providing special education services to students with visual impairments, there must be written procedures as required in the Texas Education Code (TEC), §30.002(c)(10). . . . (f) School districts that jointly operate their special education programs as a shared services arrangement, in accordance with TEC, §29.007, must do so in accordance with procedures developed by the Texas Education Agency (TEA). . . . Last Amended: January 1, 2015, 39 TexReg 10446</p> <p>§ 89.1125. Allowable Expenditures of State Special Education Funds. (a) Persons paid from special education funds shall be assigned to instructional or other duties in the special education program and/or to provide support services to the regular education program in order for students with disabilities to be included in the regular program. Support services shall include, but not be limited to, collaborative planning, co-teaching, small group instruction with special and regular education students, direct instruction to special education students, or other support services determined necessary by the admission, review, and dismissal (ARD) committee for an appropriate program for the student with disabilities. Assignments may include duties supportive to school operations equivalent to those assigned to regular education personnel. (b) Personnel assigned to provide support services to the regular education program as stated in subsection (a) of this section may be fully funded from special education funds. (c) If personnel are assigned to special education on less than a full-time basis, except as stated in subsection (a) of this section, only that portion of time for which the personnel are</p>	

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<p>with a disability in any of the ages 3, 4, 5, 18, 19, 20, or 21, if no local or State funds are available for nondisabled children of these ages. However, the LEA must comply with the nonsupplanting and other requirements of this part in providing the education and services for these children.</p> <p>(2) (i) An LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of the Act are used.</p> <p>(ii) The amount described in paragraph (b)(2)(i) of this section is determined in accordance with the definition of <i>excess costs</i> in §300.16. That amount may not include capital outlay or debt service.</p> <p>(3) If two or more LEAs jointly establish eligibility in accordance with §300.223, the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of <i>excess costs</i> in §300.16 in those agencies for elementary or secondary school students, as the case may be.</p> <p>(Authority: 20 U.S.C. 1413(a)(2)(A)) Last Amended: 71 FR 46779, Aug. 14, 2006</p> <p>§ 300.203 Maintenance of effort.</p> <p>(a) <i>Eligibility standard.</i></p> <p>(1) For purposes of establishing the LEA's eligibility for an award for a fiscal year, the SEA must determine that the LEA budgets, for the education of children with disabilities, at least the same amount, from at least one of the following sources, as the LEA spent for that purpose from the same source for the most recent fiscal year for which information is available:</p> <p>(i) Local funds only;</p> <p>(ii) The combination of State and local funds;</p> <p>(iii) Local funds only on a per capita basis; or</p> <p>(iv) The combination of State and local funds on a per capita basis.</p>	<p>assigned to students with disabilities shall be paid from state special education funds.</p> <p>(d) State special education funds may be used for special materials, supplies, and equipment which are directly related to the development and implementation of individualized education programs (IEPs) of students and which are not ordinarily purchased for the regular classroom. Office and routine classroom supplies are not allowable. Special equipment may include instructional and assistive technology devices, audiovisual equipment, computers for instruction or assessment purposes, and assessment equipment only if used directly with students.</p> <p>(e) State special education funds may be used to contract with consultants to provide staff development, program planning and evaluation, instructional services, assessments, and related services to students with disabilities.</p> <p>(f) State special education funds may be used for transportation only to and from residential placements. Prior to using federal funds for transportation costs to and from a residential facility, a district must use state or local funds based on actual expenses up to the state transportation maximum for private transportation contracts.</p> <p>(g) State special education funds may be used to pay staff travel to perform services directly related to the education of eligible students with disabilities. Funds may also be used to pay travel of staff (including administrators, general education teachers, and special education teachers and service providers) to attend staff development meetings for the purpose of improving performance in assigned positions directly related to the education of eligible students with disabilities. In no event shall the purpose for attending such staff development meetings include time spent in performing functions relating to the operation of professional organizations. Funds may also be used to pay for the joint training of parents and special education, related services, and general education personnel.</p> <p>Last Amended: November 11, 2007, 32 TexReg 8129</p>	
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<p>(2) When determining the amount of funds that the LEA must budget to meet the requirement in paragraph (a)(1) of this section, the LEA may take into consideration, to the extent the information is available, the exceptions and adjustment provided in §§300.204 and 300.205 that the LEA:</p> <ul style="list-style-type: none"> (i) Took in the intervening year or years between the most recent fiscal year for which information is available and the fiscal year for which the LEA is budgeting; and (ii) Reasonably expects to take in the fiscal year for which the LEA is budgeting. <p>(3) Expenditures made from funds provided by the Federal government for which the SEA is required to account to the Federal government or for which the LEA is required to account to the Federal government directly or through the SEA may not be considered in determining whether an LEA meets the standard in paragraph (a)(1) of this section.</p> <p>(b) <i>Compliance standard.</i></p> <ul style="list-style-type: none"> (1) Except as provided in §§300.204 and 300.205, funds provided to an LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year. (2) An LEA meets this standard if it does not reduce the level of expenditures for the education of children with disabilities made by the LEA from at least one of the following sources below the level of those expenditures from the same source for the preceding fiscal year, except as provided in §§300.204 and 300.205: <ul style="list-style-type: none"> (i) Local funds only; (ii) The combination of State and local funds; (iii) Local funds only on a per capita basis; or (iv) The combination of State and local funds on a per capita basis. (3) Expenditures made from funds provided by the Federal government for which the SEA is required to account to the Federal government or for which the LEA is required to account to the Federal government directly or through the SEA may not be considered in determining whether an LEA meets the standard in paragraphs (b)(1) and (2) of this section. <p>(c) <i>Subsequent years.</i></p> <ul style="list-style-type: none"> (1) If, in the fiscal year beginning on July 1, 2013 or July 1, 2014, an LEA fails to meet the requirements of §300.203 in effect at that time, the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required in the absence of that failure, not the LEA's reduced level of expenditures. 		
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<p>(2) If, in any fiscal year beginning on or after July 1, 2015, an LEA fails to meet the requirement of paragraph (b)(2)(i) or (iii) of this section and the LEA is relying on local funds only, or local funds only on a per capita basis, to meet the requirements of paragraph (a) or (b) of this section, the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required under paragraph (b)(2)(i) or (iii) in the absence of that failure, not the LEA's reduced level of expenditures.</p> <p>(3) If, in any fiscal year beginning on or after July 1, 2015, an LEA fails to meet the requirement of paragraph (b)(2)(ii) or (iv) of this section and the LEA is relying on the combination of State and local funds, or the combination of State and local funds on a per capita basis, to meet the requirements of paragraph (a) or (b) of this section, the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required under paragraph (b)(2)(ii) or (iv) in the absence of that failure, not the LEA's reduced level of expenditures.</p> <p>(d) <i>Consequence of failure to maintain effort.</i> If an LEA fails to maintain its level of expenditures for the education of children with disabilities in accordance with paragraph (b) of this section, the SEA is liable in a recovery action under section 452 of the General Education Provisions Act (20 U.S.C. 1234a) to return to the Department, using non-Federal funds, an amount equal to the amount by which the LEA failed to maintain its level of expenditures in accordance with paragraph (b) of this section in that fiscal year, or the amount of the LEA's Part B subgrant in that fiscal year, whichever is lower.</p> <p>(Authority: 20 U.S.C. 1413(a)(2)(A), Pub. L. 113-76, 128 Stat. 5, 394 (2014), Pub. L. 113-235, 128 Stat. 2130, 2499 (2014))</p> <p>Last Amended: 80 FR 23666, Apr. 28, 2015</p> <p>§ 300.204 Exception to maintenance of effort.</p> <p>Notwithstanding the restriction in §300.203(b), an LEA may reduce the level of expenditures by the LEA under Part B of the Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following:</p> <p>(a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.</p> <p>(b) A decrease in the enrollment of children with disabilities.</p> <p>(c) The termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child—</p> <p>(1) Has left the jurisdiction of the agency;</p> <p>(2) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or</p>		
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(3) No longer needs the program of special education.

(d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

(e) The assumption of cost by the high cost fund operated by the SEA under §300.704(c).

(Authority: 20 U.S.C. 1413(a)(2)(B))
Last Amended: 80 FR 23667, Apr. 28, 2015

§ 300.205 Adjustment to local fiscal efforts in certain fiscal years.

- (a) *Amounts in excess.* Notwithstanding §300.202(a)(2) and (b) and §300.203(b), and except as provided in paragraph (d) of this section and §300.230(e)(2), for any fiscal year for which the allocation received by an LEA under §300.705 exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by §300.203(b) by not more than 50 percent of the amount of that excess.
- (b) *Use of amounts to carry out activities under ESEA.* If an LEA exercises the authority under paragraph (a) of this section, the LEA must use an amount of local funds equal to the reduction in expenditures under paragraph (a) of this section to carry out activities that could be supported with funds under the ESEA regardless of whether the LEA is using funds under the ESEA for those activities.
- (c) *State prohibition.* Notwithstanding paragraph (a) of this section, if an SEA determines that an LEA is unable to establish and maintain programs of FAPE that meet the requirements of section 613(a) of the Act and this part or the SEA has taken action against the LEA under section 616 of the Act and subpart F of these regulations, the SEA must prohibit the LEA from reducing the level of expenditures under paragraph (a) of this section for that fiscal year.
- (d) *Special rule.* The amount of funds expended by an LEA for early intervening services under §300.226 shall count toward the maximum amount of expenditures that the LEA may reduce under paragraph (a) of this section.

(Authority: 20 U.S.C. 1413(a)(2)(C))
Last Amended: 80 FR 23667, Apr. 28, 2015

§ 300.206 Schoolwide programs under title I of the ESEA.

- (a) *General.* Notwithstanding the provisions of §§300.202 and 300.203 or any other provision of Part B of the Act, an LEA may use funds received under Part B of the Act for any fiscal year to carry out a schoolwide program under section 1114 of the ESEA, except that the amount used in any schoolwide program may not exceed—
 - (1) (i) The amount received by the LEA under Part B of the Act for that fiscal year; divided by
 - (ii) The number of children with disabilities in the

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<p>jurisdiction of the LEA; and multiplied by</p> <p>(2) The number of children with disabilities participating in the schoolwide program.</p> <p>(b) <i>Funding conditions.</i> The funds described in paragraph (a) of this section are subject to the following conditions:</p> <p>(1) The funds must be considered as Federal Part B funds for purposes of the calculations required by §300.202(a)(2) and (a)(3).</p> <p>(2) The funds may be used without regard to the requirements of §300.202(a)(1).</p> <p>(c) <i>Meeting other Part B requirements.</i> Except as provided in paragraph (b) of this section, all other requirements of Part B of the Act must be met by an LEA using Part B funds in accordance with paragraph (a) of this section, including ensuring that children with disabilities in schoolwide program schools—</p> <p>(1) Receive services in accordance with a properly developed IEP; and</p> <p>(2) Are afforded all of the rights and services guaranteed to children with disabilities under the Act.</p> <p>(Authority: 20 U.S.C. 1413(a)(2)(D)) Last Amended: 71 FR 46780, Aug. 14, 2006</p> <p>§ 300.207 Personnel development.</p> <p>The LEA must ensure that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared, subject to the requirements of §300.156 (related to personnel qualifications) and section 2102(b) of the ESEA.</p> <p>(Authority: 20 U.S.C. 1413(a)(3)) Last Amended: 82 FR 29761, June 30, 2017</p>		<p>§ 21.451. Staff Development Requirements. [Excerpt]</p> <p>(a) The staff development provided by a school district to an educator other than a principal must be:</p> <p>(1) conducted in accordance with standards developed by the district; and</p> <p>(2) designed to improve education in the district.</p> <p>(b-2) Section 21.3541 and rules adopted under that section govern the professional development provided to a principal.</p> <p>(b) The staff development described by Subsection (a) must be predominantly campus-based, related to achieving campus performance objectives established under Section 11.253, and developed and approved by the campus-level committee established under Section 11.251.</p> <p>(c) For staff development under Subsection (a), a school district may use district-wide staff development developed and approved through the district-level decision process under Section 11.251.</p> <p>(d) The staff development:</p> <p>(1) may include training in:</p> <p>(A) technology;</p> <p>(B) conflict resolution;</p> <p>(C) discipline strategies, including classroom management, district discipline policies, and the student code of conduct adopted under Section 37.001 and Chapter 37;</p>
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		<ul style="list-style-type: none"> (D) preventing, identifying, responding to, and reporting incidents of bullying; and (E) digital learning; (2) subject to Subsection (e) and to Section 21.3541 and rules adopted under that section , must include training that is evidence-based, as defined by Section 8101, Every Student Succeeds Act (20 U.S.C. Section 7801), that: <ul style="list-style-type: none"> (A) relates to instruction of students with disabilities; and (B) is designed for educators who work primarily outside the area of special education; and (3) must include suicide prevention training that must be provided: <ul style="list-style-type: none"> (A) on an annual basis, as part of a new employee orientation, to all new school district and open-enrollment charter school educators; and (B) to existing school district and open-enrollment charter school educators on a schedule adopted by the agency by rule. (d-1) The suicide prevention training required by Subsection (d)(3) must use a best practice-based program recommended by the Department of State Health Services in coordination with the agency under Section 161.325, Health and Safety Code. (d-2) The suicide prevention training required by Subsection (d)(3) may be satisfied through independent review of suicide prevention training material that: <ul style="list-style-type: none"> (1) complies with the guidelines developed by the agency; and (2) is offered online. (d-3) The digital learning training provided by Subsection (d)(1)(E) must: <ul style="list-style-type: none"> (1) discuss basic technology proficiency expectations and methods to increase an educator's digital literacy; and (2) assist an educator in the use of digital technology in learning activities that improve teaching, assessment, and instructional practices. (e) A school district is required to provide the training described by Subsection (d)(2) to an educator who works primarily outside the area of special education only if the educator does not possess the knowledge and skills necessary to implement the individualized education program developed for a student receiving instruction from the educator. A district may determine the time and place at which the training is delivered. (f) In developing or maintaining the training required by Subsection (d)(2), a school district must consult with persons with expertise in research-based practices for students with disabilities. Persons who may be consulted under this subsection include colleges, universities, private and nonprofit organizations, regional education service centers, qualified district personnel, and any other persons identified as qualified
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<p>§ 300.208 Permissive use of funds.</p> <p>(a) <i>Uses.</i> Notwithstanding §§300.202, 300.203(b), and 300.162(b), funds provided to an LEA under Part B of the Act may be used for the following activities:</p> <ol style="list-style-type: none"> (1) <i>Services and aids that also benefit nondisabled children.</i> For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more nondisabled children benefit from these services. (2) <i>Early intervening services.</i> To develop and implement coordinated, early intervening educational services in accordance with §300.226. (3) <i>High cost special education and related services.</i> To establish and implement cost or risk sharing funds, consortia, or cooperatives for the LEA itself, or for LEAs 		<p>by the district. This subsection applies to all training required by Subsection (d)(2), regardless of whether the training is provided at the campus or district level.</p> <p>...</p> <p>Last Amended: 85th Leg., R.S., Ch. 757 (S.B. 1839), Sec. 10, eff. June 12, 2017</p> <p>§ 29.011. Transition Planning. [Excerpt]</p> <p>...</p> <p>(b) The commissioner shall require each school district or shared services arrangement to designate at least one employee to serve as the district's or shared services arrangement's designee on transition and employment services for students enrolled in special education programs under this subchapter. The commissioner shall develop minimum training guidelines for a district's or shared services arrangement's designee. An individual designated under this subsection must provide information and resources about effective transition planning and services, including each issue described by Subsection (a), and interagency coordination to ensure that local school staff communicate and collaborate with:</p> <ol style="list-style-type: none"> (1) students enrolled in special education programs under this subchapter and the parents of those students; and (2) as appropriate, local and regional staff of the: <ol style="list-style-type: none"> (A) Health and Human Services Commission; (B) Texas Workforce Commission; (C) Department of State Health Services; and (D) Department of Family and Protective Services. <p>...</p> <p>Last Amended: 85th Leg., R.S., Ch. 1044 (H.B. 1886), Sec. 2, eff. June 15, 2017 85th Leg., R.S., Ch. 574 (S.B. 748), Sec. 1, eff. June 9, 2017</p>
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<p>working in a consortium of which the LEA is a part, to pay for high cost special education and related services.</p> <p>(b) <i>Administrative case management.</i> An LEA may use funds received under Part B of the Act to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of children with disabilities, that is needed for the implementation of those case management activities.</p> <p>(Authority: 20 U.S.C. 1413(a)(4)) Last Amended: 80 FR 23667, Apr. 28, 2015</p> <p>§ 300.209 Treatment of charter schools and their students.</p> <p>(a) <i>Rights of children with disabilities.</i> Children with disabilities who attend public charter schools and their parents retain all rights under this part.</p> <p>(b) <i>Charter schools that are public schools of the LEA.</i></p> <p>(1) In carrying out Part B of the Act and these regulations with respect to charter schools that are public schools of the LEA, the LEA must—</p> <p>(i) Serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools; and</p> <p>(ii) Provide funds under Part B of the Act to those charter schools—</p> <p>(A) On the same basis as the LEA provides funds to the LEA's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and</p> <p>(B) At the same time as the LEA distributes other Federal funds to the LEA's other public schools, consistent with the State's charter school law.</p> <p>(2) If the public charter school is a school of an LEA that receives funding under §300.705 and includes other public schools—</p> <p>(i) The LEA is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity; and</p> <p>(ii) The LEA must meet the requirements of paragraph (b)(1) of this section.</p> <p>(c) <i>Public charter schools that are LEAs.</i> If the public charter school is an LEA, consistent with §300.28, that receives funding under §300.705, that charter school is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity.</p>		<p>§ 12.104. Applicability of Title. [Excerpt]</p> <p>...</p> <p>(b) An open-enrollment charter school is subject to:</p> <p>...</p> <p>(2) a prohibition, restriction, or requirement, as applicable, imposed by this title or a rule adopted under this title, relating to:</p> <p>...</p> <p>(F) special education programs under Subchapter A, Chapter 29;</p> <p>...</p> <p>Last Amended: 85th Leg., R.S., Ch. 735 (S.B. 1153), Sec. 1, eff. June 12, 2017 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 21.003(10), eff. Sept. 1, 2017 85th Leg., R.S., Ch. 533 (S.B. 179), Sec. 7, eff. Sept. 1, 2017 85th Leg., R.S., Ch. 549 (S.B. 463), Sec. 1, eff. June 9, 2017</p>
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- (d) *Public charter schools that are not an LEA or a school that is part of an LEA.*
- (1) If the public charter school is not an LEA receiving funding under §300.705, or a school that is part of an LEA receiving funding under §300.705, the SEA is responsible for ensuring that the requirements of this part are met.
 - (2) Paragraph (d)(1) of this section does not preclude a State from assigning initial responsibility for ensuring the requirements of this part are met to another entity. However, the SEA must maintain the ultimate responsibility for ensuring compliance with this part, consistent with §300.149.

(Authority: 20 U.S.C. 1413(a)(5))
 Last Amended: 71 FR 46781, Aug. 14, 2006

§ 300.210 Purchase of instructional materials.

- (a) *General.* Not later than December 3, 2006, an LEA that chooses to coordinate with the National Instructional Materials Access Center (NIMAC), when purchasing print instructional materials, must acquire those instructional materials in the same manner, and subject to the same conditions as an SEA under §300.172.
- (b) *Rights of LEA.*
 - (1) Nothing in this section shall be construed to require an LEA to coordinate with the NIMAC.
 - (2) If an LEA chooses not to coordinate with the NIMAC, the LEA must provide an assurance to the SEA that the LEA will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.
 - (3) Nothing in this section relieves an LEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities in §300.172(e)(1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

(Authority: 20 U.S.C. 1413(a)(6))
 Last Amended: 71 FR 46781, Aug. 14, 2006

§ 300.211 Information for SEA.

The LEA must provide the SEA with information necessary to enable the SEA to carry out its duties under Part B of the Act, including, with respect to §§300.157 and 300.160, information relating to the performance of children with disabilities participating in programs carried out under Part B of the Act.

(Authority: 20 U.S.C. 1413(a)(7))
 Last Amended: 71 FR 46781, Aug. 14, 2006

§ 300.212 Public information.

The LEA must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the agency under Part B of the Act.

(Authority: 20 U.S.C. 1413(a)(8))

Last Amended: 71 FR 46781, Aug. 14, 2006

§ 300.213 Records regarding migratory children with disabilities.

The LEA must cooperate in the Secretary's efforts under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the States, health and educational information regarding those children.

(Authority: 20 U.S.C. 1413(a)(9))

Last Amended: 71 FR 46781, Aug. 14, 2006

§§ 300.214–300.219 [Reserved]**§ 300.220 Exception for prior local plans.**

- (a) *General.* If an LEA or a State agency described in §300.228 has on file with the SEA policies and procedures that demonstrate that the LEA or State agency meets any requirement of §300.200, including any policies and procedures filed under Part B of the Act as in effect before December 3, 2004, the SEA must consider the LEA or State agency to have met that requirement for purposes of receiving assistance under Part B of the Act.
- (b) *Modification made by an LEA or State agency.* Subject to paragraph (c) of this section, policies and procedures submitted by an LEA or a State agency in accordance with this subpart remain in effect until the LEA or State agency submits to the SEA the modifications that the LEA or State agency determines are necessary.
- (c) *Modifications required by the SEA.* The SEA may require an LEA or a State agency to modify its policies and procedures, but only to the extent necessary to ensure the LEA's or State agency's compliance with Part B of the Act or State law, if—
- (1) After December 3, 2004, the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the applicable provisions of the Act (or the regulations developed to carry out the Act) are amended;
 - (2) There is a new interpretation of an applicable provision of the Act by Federal or State courts; or
 - (3) There is an official finding of noncompliance with Federal or State law or regulations.

(Authority: 20 U.S.C. 1413(b))

Last Amended: 71 FR 46781, Aug. 14, 2006

§ 300.221 Notification of LEA or State agency in case of ineligibility.

If the SEA determines that an LEA or State agency is not eligible under Part B of the Act, then the SEA must—

- (a) Notify the LEA or State agency of that determination; and
- (b) Provide the LEA or State agency with reasonable notice and an opportunity for a hearing.

(Authority: 20 U.S.C. 1413(c))

Last Amended: 71 FR 46782, Aug. 14, 2006

§ 300.222 LEA and State agency compliance.

- (a) *General.* If the SEA, after reasonable notice and an opportunity for a hearing, finds that an LEA or State agency that has been determined to be eligible under this subpart is failing to comply with any requirement described in §§300.201 through 300.213, the SEA must reduce or must not provide any further payments to the LEA or State agency until the SEA is satisfied that the LEA or State agency is complying with that requirement.
- (b) *Notice requirement.* Any State agency or LEA in receipt of a notice described in paragraph (a) of this section must, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this section to the attention of the public within the jurisdiction of the agency.
- (c) *Consideration.* In carrying out its responsibilities under this section, each SEA must consider any decision resulting from a hearing held under §§300.511 through 300.533 that is adverse to the LEA or State agency involved in the decision.

(Authority: 20 U.S.C. 1413(d))

Last Amended: 71 FR 46782, Aug. 14, 2006

§ 300.223 Joint establishment of eligibility.

- (a) *General.* An SEA may require an LEA to establish its eligibility jointly with another LEA if the SEA determines that the LEA will be ineligible under this subpart because the agency will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.
- (b) *Charter school exception.* An SEA may not require a charter school that is an LEA to jointly establish its eligibility under paragraph (a) of this section unless the charter school is explicitly permitted to do so under the State's charter school statute.
- (c) *Amount of payments.* If an SEA requires the joint establishment of eligibility under paragraph (a) of this section, the total amount of funds made available to the affected LEAs must be equal to the sum of the payments that each LEA would have received under §300.705 if the agencies were eligible for those payments.

(Authority: 20 U.S.C. 1413(e)(1) and (2))

Last Amended: 71 FR 46782, Aug. 14, 2006

<p>§ 300.224 Requirements for establishing eligibility.</p> <p>(a) <i>Requirements for LEAs in general.</i> LEAs that establish joint eligibility under this section must—</p> <ol style="list-style-type: none"> (1) Adopt policies and procedures that are consistent with the State's policies and procedures under §§300.101 through 300.163, and §§300.165 through 300.174; and (2) Be jointly responsible for implementing programs that receive assistance under Part B of the Act. <p>(b) <i>Requirements for educational service agencies in general.</i> If an educational service agency is required by State law to carry out programs under Part B of the Act, the joint responsibilities given to LEAs under Part B of the Act—</p> <ol style="list-style-type: none"> (1) Do not apply to the administration and disbursement of any payments received by that educational service agency; and (2) Must be carried out only by that educational service agency. <p>(c) <i>Additional requirement.</i> Notwithstanding any other provision of §§300.223 through 300.224, an educational service agency must provide for the education of children with disabilities in the least restrictive environment, as required by §300.112.</p> <p>(Authority: 20 U.S.C. 1413(e)(3) and (4)) Last Amended: 71 FR 46782, Aug. 14, 2006</p> <p>§ 300.225 [Reserved]</p> <p>§ 300.226 Early intervening services.</p> <p>(a) <i>General.</i> An LEA may not use more than 15 percent of the amount the LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the LEA pursuant to §300.205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment. (See appendix D for examples of how §300.205(d), regarding local maintenance of effort, and §300.226(a) affect one another.)</p> <p>(b) <i>Activities.</i> In implementing coordinated, early intervening services under this section, an LEA may carry out activities that include—</p> <ol style="list-style-type: none"> (1) Professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and 		
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<p>(2) Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.</p> <p>(c) <i>Construction.</i> Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability.</p> <p>(d) <i>Reporting.</i> Each LEA that develops and maintains coordinated, early intervening services under this section must annually report to the SEA on—</p> <p>(1) The number of children served under this section who received early intervening services; and</p> <p>(2) The number of children served under this section who received early intervening services and subsequently receive special education and related services under Part B of the Act during the preceding two year period.</p> <p>(e) <i>Coordination with ESEA.</i> Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.</p> <p>(Authority: 20 U.S.C. 1413(f)) Last Amended: 71 FR 46782, Aug. 14, 2006</p> <p>§ 300.227 Direct services by the SEA.</p> <p>(a) <i>General.</i></p> <p>(1) An SEA must use the payments that would otherwise have been available to an LEA or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that LEA, or for whom that State agency is responsible, if the SEA determines that the LEA or State agency—</p> <p>(i) Has not provided the information needed to establish the eligibility of the LEA or State agency, or elected not to apply for its Part B allotment, under Part B of the Act;</p> <p>(ii) Is unable to establish and maintain programs of FAPE that meet the requirements of this part;</p> <p>(iii) Is unable or unwilling to be consolidated with one or more LEAs in order to establish and maintain the programs; or</p> <p>(iv) Has one or more children with disabilities who can best be served by a regional or State program or service delivery system designed to meet the needs of these children.</p> <p>(2) <i>SEA administrative procedures.</i></p> <p>(i) In meeting the requirements in paragraph (a)(1) of this section, the SEA may provide special education and related services directly, by contract, or through</p>		
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other arrangements.

(ii) The excess cost requirements of §300.202(b) do not apply to the SEA.

(b) *Manner and location of education and services.* The SEA may provide special education and related services under paragraph (a) of this section in the manner and at the locations (including regional or State centers) as the SEA considers appropriate. The education and services must be provided in accordance with this part.

(Authority: 20 U.S.C. 1413(g))
Last Amended: 71 FR 46783, Aug. 14, 2006

§ 300.228 State agency eligibility.
Any State agency that desires to receive a subgrant for any fiscal year under §300.705 must demonstrate to the satisfaction of the SEA that—

(a) All children with disabilities who are participating in programs and projects funded under Part B of the Act receive FAPE, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and

(b) The agency meets the other conditions of this subpart that apply to LEAs.

(Authority: 20 U.S.C. 1413(h))
Last Amended: 71 FR 46783, Aug. 14, 2006

§ 300.229 Disciplinary information.

(a) The State may require that a public agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children.

(b) The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child.

(c) If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child.

(Authority: 20 U.S.C. 1413(i))
Last Amended: 71 FR 46783, Aug. 14, 2006

§ 37.017. Destruction of Certain Records.
Information received by a school district under Article 15.27, Code of Criminal Procedure, may not be attached to the permanent academic file of the student who is the subject of the report. The school district shall destroy the information at the end of the school year in which the report was filed.
Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995

§ 37.022. Notice of Disciplinary Action.

(a) In this section:

(1) "Disciplinary action" means a suspension, expulsion, placement in an alternative education program, or other limitation in enrollment eligibility of a student by a district or school.

(2) "District or school" includes an independent school district, a home-rule school district, a campus or campus program charter holder, or an open-enrollment charter school.

(b) If a district or school takes disciplinary action against a student and the student subsequently enrolls in another district or school before the expiration of the period of disciplinary action, the governing body of the district or school taking the disciplinary action shall provide to the district or school in which the student enrolls, at the same time other records of

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<p>§ 300.230 SEA flexibility.</p> <p>(a) <i>Adjustment to State fiscal effort in certain fiscal years.</i> For any fiscal year for which the allotment received by a State under §300.703 exceeds the amount the State received for the previous fiscal year and if the State in school year 2003–2004 or any subsequent school year pays or reimburses all LEAs within the State from State revenue 100 percent of the non-Federal share of the costs of special education and related services, the SEA, notwithstanding §§300.162 through 300.163 (related to State-level nonsupplanting and maintenance of effort), and §300.175 (related to direct services by the SEA) may reduce the level of expenditures from State sources for the education of children with disabilities by not more than 50 percent of the amount of such excess.</p> <p>(b) <i>Prohibition.</i> Notwithstanding paragraph (a) of this section, if the Secretary determines that an SEA is unable to establish, maintain, or oversee programs of FAPE that meet the requirements of this part, or that the State needs assistance, intervention, or substantial intervention under §300.603, the Secretary prohibits the SEA from exercising the authority in paragraph (a) of this section.</p> <p>(c) <i>Education activities.</i> If an SEA exercises the authority under paragraph (a) of this section, the agency must use funds from State sources, in an amount equal to the amount of the reduction under paragraph (a) of this section, to support activities authorized under the ESEA, or to support need-based student or teacher higher education programs.</p> <p>(d) <i>Report.</i> For each fiscal year for which an SEA exercises the authority under paragraph (a) of this section, the SEA must report to the Secretary—</p> <ol style="list-style-type: none"> (1) The amount of expenditures reduced pursuant to that paragraph; and (2) The activities that were funded pursuant to paragraph (c) of this section. <p>(e) <i>Limitation.</i></p> <ol style="list-style-type: none"> (1) Notwithstanding paragraph (a) of this section, an SEA may not reduce the level of expenditures described in paragraph (a) of this section if any LEA in the State would, as a result of such reduction, receive less than 100 percent of the amount necessary to ensure that all children with disabilities served by the LEA receive FAPE from the combination of Federal funds received under 		<p>the student are provided, a copy of the order of disciplinary action.</p> <p>(c) Subject to Section 37.007(e), the district or school in which the student enrolls may continue the disciplinary action under the terms of the order or may allow the student to attend regular classes without completing the period of disciplinary action.</p> <p>Last Amended: 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(16), eff. September 1, 2005</p>
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<p>Part B of the Act and State funds received from the SEA.</p> <p>(2) If an SEA exercises the authority under paragraph (a) of this section, LEAs in the State may not reduce local effort under §300.205 by more than the reduction in the State funds they receive.</p> <p>(Authority: 20 U.S.C. 1413(j)) Last Amended: 71 FR 46783, Aug. 14, 2006</p>		
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Subpart D Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements	Texas Administrative Code	Texas Education Code
<p>Parental Consent § 300.300 Parental consent. (a) <i>Parental consent for initial evaluation</i></p> <p>(1) (i) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under §300.8 must, after providing notice consistent with §§300.503 and 300.504, obtain informed consent, consistent with §300.9, from the parent of the child before conducting the evaluation.</p> <p>(ii) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.</p> <p>(iii) The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.</p> <p>(2) For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if —</p> <p>(i) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;</p> <p>(ii) The rights of the parents of the child have been terminated in accordance with State law; or</p> <p>(iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.</p> <p>(3) (i) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under paragraph (a)(1) of this section, or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516), if appropriate, except to the extent inconsistent with State law relating to such parental consent.</p>	<p>§ 89.1011. Full and Individual Initial Evaluation. [Excerpt] ...</p> <p>(b) If a parent submits a written request to a school district's director of special education services or to a district administrative employee for a full individual and initial evaluation of a student, the school district must, not later than the 15th school day after the date the district receives the request:</p> <p>(1) provide the parent with prior written notice of its proposal to conduct an evaluation consistent with 34 Code of Federal Regulations (CFR), §300.503; a copy of the procedural safeguards notice required by 34 CFR, §300.504; and an opportunity to give written consent for the evaluation; or</p> <p>...</p> <p>(g) For purposes of subsections (b), (c), and (e) of this section, school day does not include a day that falls after the last instructional day of the spring school term and before the first instructional day of the subsequent fall school term.</p> <p>...</p> <p>Last Amended: January 1, 2015, 39 TexReg 10446</p> <p>§ 89.1056. Transfer of Assistive Technology Devices. [Excerpt] ...</p> <p>(b) A transfer of an assistive technology device (ATD) pursuant to TEC, §30.0015, shall be in accordance with a transfer agreement which incorporates the standards described in TEC, §30.0015(c), and which includes, specifically, the following:</p> <p>...</p> <p>(2) The informed consent of the parent of the student with a disability for whom the ATD is being transferred must be obtained before the transfer of an ATD pursuant to TEC, §30.0015. The procedures employed by a school district in obtaining such informed consent shall be consistent with the procedures employed by the district to obtain parental consent under 34 Code of Federal Regulations (CFR), §300.300. If the student has the legal capacity to enter into a contract, the informed consent may be obtained from the student. Consistent with 34 CFR, §300.505(c), informed parental or adult student consent need not be obtained if the school district can demonstrate that it has taken reasonable measures to obtain that consent, and the student's parent or the adult student has failed to respond. To meet the reasonable measures requirement, the school district must use</p>	<p>§ 26.009. Consent Required for Certain Activities.</p> <p>(a) An employee of a school district must obtain the written consent of a child's parent before the employee may:</p> <p>(1) conduct a psychological examination, test, or treatment, unless the examination, test, or treatment is required under Section 38.004 or state or federal law regarding requirements for special education; or</p> <p>(2) make or authorize the making of a videotape of a child or record or authorize the recording of a child's voice.</p> <p>(b) An employee of a school district is not required to obtain the consent of a child's parent before the employee may make a videotape of a child or authorize the recording of a child's voice if the videotape or voice recording is to be used only for:</p> <p>(1) purposes of safety, including the maintenance of order and discipline in common areas of the school or on school buses;</p> <p>(2) a purpose related to a cocurricular or extracurricular activity;</p> <p>(3) a purpose related to regular classroom instruction;</p> <p>(4) media coverage of the school; or</p> <p>(5) a purpose related to the promotion of student safety under Section 29.022.</p> <p>Last Amended: 84th Leg., R.S., Ch. 1147 (S.B. 507), Sec.1, eff. June 19, 2015</p> <p>§ 29.004. Full Individual and Initial Evaluation. [Excerpt] ...</p> <p>(c) If a parent or legal guardian makes a written request to a school district's director of special education services or to a district administrative employee for a full individual and initial evaluation of a student, the district shall, not later than the 15th school day after the date the district receives the request:</p> <p>(1) provide an opportunity for the parent or legal guardian to give written consent for the evaluation; or</p> <p>(2) refuse to provide the evaluation and provide the parent or legal guardian with notice of procedural safeguards under 20 U.S.C. Section 1415(b).</p> <p>Last Amended: 83rd Leg., Ch. 757 (S.B. 816), Sec. 1, eff. September 1, 2013</p> <p>§ 29.0041. Information and Consent for Certain Psychological Examinations or Tests.</p> <p>(a) On request of a child's parent, before obtaining the parent's consent under 20 U.S.C. Section 1414 for the administration of any psychological examination or test to the child that is</p>

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<p>(ii) The public agency does not violate its obligation under §300.111 and §§300.301 through 300.311 if it declines to pursue the evaluation.</p> <p>(b) <i>Parental consent for services</i></p> <p>(1) A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.</p> <p>(2) The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.</p> <p>(3) If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the public agency—</p> <p>(i) May not use the procedures in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;</p> <p>(ii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and</p> <p>(iii) Is not required to convene an IEP Team meeting or develop an IEP under §§300.320 and 300.324 for the child.</p> <p>(4) If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency—</p> <p>(i) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with §300.503 before ceasing the provision of special education and related services;</p> <p>(ii) May not use the procedures in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;</p> <p>(iii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and</p> <p>(iv) Is not required to convene an IEP Team meeting or develop an IEP under §§300.320 and 300.324 for</p>	<p>procedures consistent with those described in 34 CFR, §300.322(d).</p> <p>...</p> <p>Last Amended: November 11, 2007, 32 TexReg 8129</p>	<p>included as part of the evaluation of the child's need for special education, a school district shall provide to the child's parent:</p> <p>(1) the name and type of the examination or test; and</p> <p>(2) an explanation of how the examination or test will be used to develop an appropriate individualized education program for the child.</p> <p>(b) If the district determines that an additional examination or test is required for the evaluation of a child's need for special education after obtaining consent from the child's parent under Subsection (a), the district shall provide the information described by Subsections (a)(1) and (2) to the child's parent regarding the additional examination or test and shall obtain additional consent for the examination or test.</p> <p>(c) The time required for the district to provide information and seek consent under Subsection (b) may not be counted toward the 60 calendar days for completion of an evaluation under Section 29.004. If a parent does not give consent under Subsection (b) within 20 calendar days after the date the district provided to the parent the information required by that subsection, the parent's consent is considered denied.</p> <p>Last Amended: 78th Leg., ch. 1008, Sec. 2, eff. June 20, 2003</p> <p>§ 29.016. Evaluation Conducted Pursuant to a Special Education Due Process Hearing.</p> <p>A special education hearing officer in an impartial due process hearing brought under 20 U.S.C. Section 1415 may issue an order or decision that authorizes one or more evaluations of a student who is eligible for, or who is suspected as being eligible for, special education services. Such an order or decision authorizes the evaluation of the student without parental consent as if it were a court order for purposes of any state or federal law providing for consent by order of a court.</p> <p>Last Amended: 77th Leg., ch. 767, Sec. 8, eff. June 13, 2001</p>
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<p>the child for further provision of special education and related services.</p> <p>(c) <i>Parental consent for reevaluations.</i></p> <p>(1) Subject to paragraph (c)(2) of this section, each public agency —</p> <p>(i) Must obtain informed parental consent, in accordance with §300.300(a)(1), prior to conducting any reevaluation of a child with a disability.</p> <p>(ii) If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph (a)(3) of this section.</p> <p>(iii) The public agency does not violate its obligation under §300.111 and §§300.301 through 300.311 if it declines to pursue the evaluation or reevaluation.</p> <p>(2) The informed parental consent described in paragraph (c)(1) of this section need not be obtained if the public agency can demonstrate that—</p> <p>(i) It made reasonable efforts to obtain such consent; and</p> <p>(ii) The child's parent has failed to respond.</p> <p>(d) <i>Other consent requirements.</i></p> <p>(1) Parental consent is not required before—</p> <p>(i) Reviewing existing data as part of an evaluation or a reevaluation; or</p> <p>(ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.</p> <p>(2) In addition to the parental consent requirements described in paragraphs (a), (b), and (c) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.</p> <p>(3) A public agency may not use a parent's refusal to consent to one service or activity under paragraphs (a), (b), (c), or (d)(2) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.</p> <p>(4) (i) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures (described in paragraphs (a)(3) and (c)(1) of this section); and</p>		
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(ii) The public agency is not required to consider the child as eligible for services under §§300.132 through 300.144.

(5) To meet the reasonable efforts requirement in paragraphs (a)(1)(iii), (a)(2)(i), (b)(2), and (c)(2)(i) of this section, the public agency must document its attempts to obtain parental consent using the procedures in §300.322(d).

(Authority: 20 U.S.C. 1414(a)(1)(D) and 1414(c))
Last Amended: 73 FR 73027, Dec. 1, 2008

Evaluations and Reevaluations

§ 300.301 Initial evaluations.

- (a) *General.* Each public agency must conduct a full and individual initial evaluation, in accordance with §§300.304 through 300.306, before the initial provision of special education and related services to a child with a disability under this part.
- (b) *Request for initial evaluation.* Consistent with the consent requirements in §300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.
- (c) *Procedures for initial evaluation.* The initial evaluation—
 - (1) (i) Must be conducted within 60 days of receiving parental consent for the evaluation; or
 - (ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and
 - (2) Must consist of procedures—
 - (i) To determine if the child is a child with a disability under §300.8; and
 - (ii) To determine the educational needs of the child.
- (d) *Exception.* The timeframe described in paragraph (c)(1) of this section does not apply to a public agency if—
 - (1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or
 - (2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under §300.8.
- (e) The exception in paragraph (d)(2) of this section applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.

(Authority: 20 U.S.C. 1414(a))
Last Amended: 72 FR 61307, Oct. 30, 2007

§ 89.1011. Full and Individual Initial Evaluation. [Excerpt]

- ...
- (b) If a parent submits a written request to a school district's director of special education services or to a district administrative employee for a full individual and initial evaluation of a student, the school district must, not later than the 15th school day after the date the district receives the request:
 - (1) provide the parent with prior written notice of its proposal to conduct an evaluation consistent with 34 Code of Federal Regulations (CFR), §300.503; a copy of the procedural safeguards notice required by 34 CFR, §300.504; and an opportunity to give written consent for the evaluation; or
 - (2) provide the parent with prior written notice of its refusal to conduct an evaluation consistent with 34 CFR, §300.503, and a copy of the procedural safeguards notice required by 34 CFR, §300.504.
 - (c) Except as otherwise provided in this section, a written report of a full individual and initial evaluation of a student must be completed as follows:
 - (1) not later than the 45th school day following the date on which the school district receives written consent for the evaluation from the student's parent, except that if a student has been absent from school during that period on three or more school days, that period must be extended by a number of school days equal to the number of school days during that period on which the student has been absent; or
 - (2) for students under five years of age by September 1 of the school year and not enrolled in public school and for students enrolled in a private or home school setting, not later than the 45th school day following the date on which the school district receives written consent for the evaluation from the student's parent.
- ...
- (e) Notwithstanding the timelines in subsections (c) and (d) of this section, if the school district received the written consent for

§ 29.004. Full Individual and Initial Evaluation. [Excerpt]

- (a) A written report of a full individual and initial evaluation of a student for purposes of special education services shall be completed as follows, except as otherwise provided by this section:
 - (1) not later than the 45th school day following the date on which the school district, in accordance with 20 U.S.C. Section 1414(a), as amended, receives written consent for the evaluation, signed by the student's parent or legal guardian, except that if a student has been absent from school during that period on three or more days, that period must be extended by a number of school days equal to the number of school days during that period on which the student has been absent; or
 - (2) for students under five years of age by September 1 of the school year and not enrolled in public school and for students enrolled in a private or home school setting, not later than the 45th school day following the date on which the school district receives written consent for the evaluation, signed by a student's parent or legal guardian.
- (a-1) If a school district receives written consent signed by a student's parent or legal guardian for a full individual and initial evaluation of a student at least 35 but less than 45 school days before the last instructional day of the school year, the evaluation must be completed and the written report of the evaluation must be provided to the parent or legal guardian not later than June 30 of that year. The student's admission, review, and dismissal committee shall meet not later than the 15th school day of the following school year to consider the evaluation. If a district receives written consent signed by a student's parent or legal guardian less than 35 school days before the last instructional day of the school year or if the district receives the written consent at least 35 but less than 45 school days before the last instructional day of the school year but the student is absent from school during that period on three or more days, Subsection (a)(1) applies to the date the written report of the full individual and initial evaluation is required.
- (a-2) For purposes of this section, "school day" does not include a

	<p>the evaluation from the student's parent at least 35 but less than 45 school days before the last instructional day of the school year, the written report of a full individual and initial evaluation of a student must be provided to the student's parent not later than June 30 of that year. The student's ARD committee must meet not later than the 15th school day of the following school year to consider the evaluation. If, however, the student was absent from school three or more days between the time that the school district received written consent and the last instructional day of the school year, the timeline in subsection (c)(1) of this section applies to the date the written report of the full individual and initial evaluation is required. If an initial evaluation completed not later than June 30 indicates that the student will need extended school year services during that summer, the ARD committee must meet as expeditiously as possible.</p> <p>(f) If a student was in the process of being evaluated for special education eligibility by a school district and enrolls in another school district before the previous school district completed the full individual and initial evaluation, the new school district must coordinate with the previous school district as necessary and as expeditiously as possible to ensure a prompt completion of the evaluation in accordance with 34 CFR, §300.301(d)(2) and (e) and §300.304(c)(5). The timelines in subsections (c) and (e) of this section do not apply in such a situation if:</p> <ol style="list-style-type: none"> (1) the new school district is making sufficient progress to ensure a prompt completion of the evaluation; and (2) the parent and the new school district agree to a specific time when the evaluation will be completed. <p>(g) For purposes of subsections (b), (c), and (e) of this section, school day does not include a day that falls after the last instructional day of the spring school term and before the first instructional day of the subsequent fall school term.</p> <p>(h) For purposes of subsections (c)(1) and (e) of this section, a student is considered absent for the school day if the student is not in attendance at the school's official attendance taking time or at the alternate attendance taking time set for that student. A student is considered in attendance if the student is off campus participating in an activity that is approved by the school board and is under the direction of a professional staff member of the school district, or an adjunct staff member who has a minimum of a bachelor's degree and is eligible for participation in the Teacher Retirement System of Texas.</p> <p>Last Amended: January 1, 2015, 39 TexReg 10446</p> <p>§ 89.1050. The Admission, Review, and Dismissal (ARD) Committee. [Excerpt]</p> <p>...</p> <p>(j) A school district must comply with the following for a student who is newly enrolled in the school district.</p> <p>...</p> <ol style="list-style-type: none"> (2) When a student transfers from a school district in another 	<p>day that falls after the last instructional day of the spring school term and before the first instructional day of the subsequent fall school term. The commissioner by rule may determine days during which year-round schools are recessed that, consistent with this subsection, are not considered to be school days for purposes of this section.</p> <p>(a-3) Subsection (a) does not impair any rights of an infant or toddler with a disability who is receiving early intervention services in accordance with 20 U.S.C. Section 1431.</p> <p>...</p> <p>Last Amended: 83rd Leg., R.S., Ch. 757 (S.B. 816), Sec. 1, eff. September 1, 2013</p> <p>§ 30.002. Education for Children with Visual Impairments. [Excerpt]</p> <p>...</p> <p>(c) The comprehensive statewide plan for the education of children with visual impairments must:</p> <ol style="list-style-type: none"> (1) adequately provide for comprehensive diagnosis and evaluation of each school-age child with a serious visual impairment; (2) include the procedures, format, and content of the individualized education program for each child with a visual impairment; (3) emphasize providing educational services to children with visual impairments in their home communities whenever possible; (4) include methods to ensure that children with visual impairments receiving special education services in school districts receive, before being placed in a classroom setting or within a reasonable time after placement: <ol style="list-style-type: none"> (A) evaluation of the impairment; and (B) instruction in an expanded core curriculum, which is required for students with visual impairments to succeed in classroom settings and to derive lasting, practical benefits from the education provided by school districts, including instruction in: <ol style="list-style-type: none"> (i) compensatory skills, such as braille and concept development, and other skills needed to access the rest of the curriculum; (ii) orientation and mobility; (iii) social interaction skills; (iv) career planning; (v) assistive technology, including optical devices; (vi) independent living skills; (vii) recreation and leisure enjoyment; (viii) self-determination; and (ix) sensory efficiency;
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	<p>state in the same school year and the parents verify that the student was receiving special education services in the previous school district or the previous school district verifies in writing or by telephone that the student was receiving special education services, the new school district must meet the requirements of 34 CFR, §300.323(f), regarding the provision of special education services. If the new school district determines that an evaluation is necessary, the evaluation is considered a full individual and initial evaluation and must be completed within the timelines established by §89.1011(c) and (e) of this title. The timeline for completing the requirements in 34 CFR, §300.323(f)(2), if appropriate, is 30 calendar days from the date of the completion of the evaluation report. If the school district determines that an evaluation is not necessary, the timeline for completing the requirements outlined in 34 CFR, §300.323(f)(2), is 30 school days from the date the student is verified as being a student eligible for special education services.</p> <p>...</p> <p>Last Amended: March 22, 2017, 42 TexReg 1247</p>	<ul style="list-style-type: none"> (5) provide for flexibility on the part of school districts to meet the special needs of children with visual impairments through: <ul style="list-style-type: none"> (A) specialty staff and resources provided by the district; (B) contractual arrangements with other qualified public or private agencies; (C) supportive assistance from regional education service centers or adjacent school districts; (D) short-term or long-term services through the Texas School for the Blind and Visually Impaired or related facilities or programs; or (E) other instructional and service arrangements approved by the agency; (6) include a statewide admission, review, and dismissal process; (7) provide for effective interaction between the visually impaired child's classroom setting and the child's home environment, including providing for parental training and counseling either by school district staff or by representatives of other organizations directly involved in the development and implementation of the individualized education program for the child; (8) require the continuing education and professional development of school district staff providing special education services to children with visual impairments; (9) provide for adequate monitoring and precise evaluation of special education services provided to children with visual impairments through school districts; and (10) require that school districts providing special education services to children with visual impairments develop procedures for assuring that staff assigned to work with the children have prompt and effective access directly to resources available through: <ul style="list-style-type: none"> (A) cooperating agencies in the area; (B) the Texas School for the Blind and Visually Impaired; (C) the Central Media Depository for specialized instructional materials and aids made specifically for use by students with visual impairments; (D) sheltered workshops participating in the state program of purchases of blind-made goods and services; and (E) related sources. <p>(c-1) To implement Subsection (c)(1) and to determine a child's eligibility for a school district's special education program on the basis of a visual impairment, the full individual and initial evaluation of the student required by Section 29.004 must, in accordance with commissioner rule:</p> <ul style="list-style-type: none"> (1) include an orientation and mobility evaluation conducted: <ul style="list-style-type: none"> (A) by a person who is appropriately certified as an
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<p>§ 300.302 Screening for instructional purposes is not evaluation.</p> <p>The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.</p> <p>(Authority: 20 U.S.C. 1414(a)(1)(E))</p> <p>Last Amended: 71 FR 46785, Aug. 14, 2006</p> <p>§ 300.303 Reevaluations.</p> <p>(a) <i>General.</i> A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§300.304 through 300.311—</p> <ol style="list-style-type: none"> (1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or (2) If the child's parent or teacher requests a reevaluation. <p>(b) <i>Limitation.</i> A reevaluation conducted under paragraph (a) of this section—</p> <ol style="list-style-type: none"> (1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and (2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary. <p>(Authority: 20 U.S.C. 1414(a)(2))</p> <p>Last Amended: 71 FR 46785, Aug. 14, 2006</p> <p>§ 300.304 Evaluation procedures.</p> <p>(a) <i>Notice.</i> The public agency must provide notice to the parents of a child with a disability, in accordance with §300.503, that describes any evaluation procedures the agency proposes to conduct.</p> <p>(b) <i>Conduct of evaluation.</i> In conducting the evaluation, the public</p>	<p>§ 89.1230. Eligible Students with Disabilities. [Excerpt]</p> <p>(a) School districts shall implement assessment procedures that differentiate between language proficiency and handicapping conditions in accordance with Subchapter AA of this chapter (relating to Commissioner's Rules Concerning Special Education Services) and shall establish placement procedures</p>	<p>orientation and mobility specialist, as determined under commissioner rule; and</p> <p>(B) in a variety of lighting conditions and in a variety of settings, including in the student's home, school, and community and in settings unfamiliar to the student; and</p> <p>(2) provide for a person who is appropriately certified as an orientation and mobility specialist to participate, as part of a multidisciplinary team, in evaluating data on which the determination of the child's eligibility is based.</p> <p>...</p> <p>Last Amended: 83rd Leg., R.S., Ch. 505 (S.B. 39), Sec. 1, eff. June 14, 2013 83rd Leg., R.S., Ch. 637 (H.B. 590), Sec. 1, eff. September 1, 2013</p> <p>§ 29.004. Full Individual and Initial Evaluation. [Excerpt]</p> <p>...</p> <p>(b) The evaluation shall be conducted using procedures that are appropriate for the student's most proficient method of communication.</p>
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<p>agency must—</p> <p>(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—</p> <p>(i) Whether the child is a child with a disability under §300.8; and</p> <p>(ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);</p> <p>(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and</p> <p>(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.</p> <p>(c) <i>Other evaluation procedures.</i> Each public agency must ensure that—</p> <p>(1) Assessments and other evaluation materials used to assess a child under this part—</p> <p>(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;</p> <p>(ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;</p> <p>(iii) Are used for the purposes for which the assessments or measures are valid and reliable;</p> <p>(iv) Are administered by trained and knowledgeable personnel; and</p> <p>(v) Are administered in accordance with any instructions provided by the producer of the assessments.</p> <p>(2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.</p> <p>(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).</p> <p>(4) The child is assessed in all areas related to the</p>	<p>that ensure that placement in a bilingual education or English as a second language program is not refused solely because the student has a disability.</p> <p>...</p> <p>Last Amended: May 28, 2012, 37 TexReg 3822</p> <p>22 TAC § 465.38. Psychological Services in the Schools. [Excerpt]</p> <p>(a) This rule acknowledges the unique difference in the delivery of school psychological services in the public schools from psychological services in the private sector. The Board recognizes the purview of the State Board of Education and the Texas Education Agency in safeguarding the rights of public school children in Texas. The mandated multidisciplinary team decision making, hierarchy of supervision, regulatory provisions, and past traditions of school psychological service delivery both nationally and in Texas, among other factors, allow for rules of practice in the public schools which reflect these occupational distinctions from the private practice of psychology.</p> <p>(b) Scope of Practice.</p> <p>(1) A Licensed Specialist in School Psychology (LSSP) means a person who is trained to address psychological and behavioral problems manifested in and associated with educational systems by utilizing psychological concepts and methods in programs or actions which attempt to improve the learning, adjustment and behavior of students. Such activities include, but are not limited to, addressing special education eligibility, conducting manifestation determinations, and assisting with the development and implementation of individual educational programs, conducting behavioral assessments, and designing and implementing behavioral interventions and supports.</p> <p>(2) The assessment of emotional or behavioral disturbance for educational purposes, using psychological techniques and procedures is considered the practice of psychology.</p> <p>...</p> <p>Last Amended: April 20, 2016, 41 TexReg 2770</p>	<p>...</p> <p>Last Amended: 83rd Leg., R.S., Ch. 757 (S.B. 816), Sec. 1, eff. September 1, 2013</p> <p>§ 29.310. Procedures and Materials for Assessment and Placement.</p> <p>(a) Procedures and materials for assessment and placement of students who are deaf or hard of hearing shall be selected and administered so as not to be racially, culturally, or sexually discriminatory.</p> <p>(b) A single assessment instrument may not be the sole criterion for determining the placement of a student.</p> <p>(c) The procedures and materials for the assessment and placement of a student who is deaf or hard of hearing shall be in the student's preferred mode of communication. All other procedures and materials used with any student who is deaf or hard of hearing and who has limited English proficiency shall be in the student's preferred mode of communication.</p> <p>Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995</p> <p>§ 30.002. Education for Children with Visual Impairments. [Excerpt]</p> <p>...</p> <p>(c) The comprehensive statewide plan for the education of children with visual impairments must:</p> <p>(1) adequately provide for comprehensive diagnosis and evaluation of each school-age child with a serious visual impairment;</p> <p>...</p> <p>(4) include methods to ensure that children with visual impairments receiving special education services in school districts receive, before being placed in a classroom setting or within a reasonable time after placement:</p> <p>(A) evaluation of the impairment; and</p> <p>...</p> <p>(f) In the development of the individualized education program for a functionally blind student, proficiency in braille reading and writing is presumed to be essential for the student's satisfactory educational progress. Each functionally blind student is entitled to braille reading and writing instruction that is sufficient to enable the student to communicate with the same level of proficiency as other students of comparable ability who are at the same grade level. Braille instruction may be used in combination with other special education services appropriate to the student's educational needs. The assessment of each functionally blind student for the purpose of developing the student's individualized education program must include documentation of the student's strengths and weaknesses in braille skills. Each person assisting in the development of a functionally blind student's individualized education program shall receive information describing the</p>
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<p>suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;</p> <p>(5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with §300.301(d)(2) and (e), to ensure prompt completion of full evaluations.</p> <p>(6) In evaluating each child with a disability under §§300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.</p> <p>(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.</p> <p>(Authority: 20 U.S.C. 1414(b)(1)-(3), 1412(a)(6)(B)) Last Amended: 71 FR 46785, Aug. 14, 2006</p> <p>§ 300.305 Additional requirements for evaluations and reevaluations.</p> <p>(a) <i>Review of existing evaluation data.</i> As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must—</p> <p>(1) Review existing evaluation data on the child, including—</p> <p>(i) Evaluations and information provided by the</p>	<p>benefits of braille instruction. Each functionally blind student's individualized education program must specify the appropriate learning medium based on the assessment report and ensure that instruction in braille will be provided by a teacher certified to teach students with visual impairments. For purposes of this subsection, the agency shall determine the criteria for a student to be classified as functionally blind.</p> <p>...</p> <p>Last Amended: 83rd Leg., R.S., Ch. 505 (S.B. 39), Sec. 1, eff. June 14, 2013 83rd Leg., R.S., Ch. 637 (H.B. 590), Sec. 1, eff. September 1, 2013</p> <p>§ 30.083. Statewide Plan. [Excerpt]</p> <p>(a) The director of services shall develop and administer a comprehensive statewide plan for educational services for students who are deaf or hard of hearing, including continuing diagnosis and evaluation, counseling, and teaching. The plan shall be designed to accomplish the following objectives:</p> <p>...</p> <p>(6) recognizing the need for development of language and communications abilities in students who are deaf or hard of hearing, but also calling for the use of methods of communication that will meet the needs of each individual student, with each student assessed thoroughly so as to ascertain the student's potential for communications through a variety of means, including through oral or aural means, fingerspelling, or sign language.</p> <p>...</p> <p>Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995</p> <p>Texas Occupations Code</p> <p>§ 501.503. Criminal Penalty.</p> <p>(a) A person commits an offense if the person engages in the practice of psychology or represents that the person is a psychologist in violation of this chapter.</p> <p>(b) An offense under this section is a Class A misdemeanor.</p> <p>(c) Each day a violation occurs is a separate offense.</p> <p>Last Amended: 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999</p> <p>§ 30.002. Education for Children with Visual Impairments. [Excerpt]</p> <p>...</p> <p>(c-2) The scope of any reevaluation by a school district of a student who has been determined, after the full individual and initial evaluation, to be eligible for the district's special education program on the basis of a visual impairment shall be determined, in accordance with 34 C.F.R. Sections 300.122 and 300.303 through 300.311, by a multidisciplinary team that</p>
	<p>§ 89.1040. Eligibility Criteria. [Excerpt]</p> <p>...</p> <p>(c) Eligibility definitions.</p> <p>...</p> <p>(12) Visual impairment.</p> <p>...</p> <p>(E) Beginning with the 2014-2015 school year, the</p>

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<p>parents of the child;</p> <p>(ii) Current classroom-based, local, or State assessments, and classroom-based observations; and</p> <p>(iii) Observations by teachers and related services providers; and</p> <p>(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—</p> <p>(i) (A) Whether the child is a child with a disability, as defined in §300.8, and the educational needs of the child; or</p> <p>(B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;</p> <p>(ii) The present levels of academic achievement and related developmental needs of the child;</p> <p>(iii) (A) Whether the child needs special education and related services; or</p> <p>(B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and</p> <p>(iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.</p> <p>(b) <i>Conduct of review.</i> The group described in paragraph (a) of this section may conduct its review without a meeting.</p> <p>(c) <i>Source of data.</i> The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.</p> <p>(d) <i>Requirements if additional data are not needed.</i></p> <p>(1) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of—</p> <p>(i) That determination and the reasons for the determination; and</p> <p>(ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.</p> <p>(2) The public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents.</p> <p>(e) <i>Evaluations before change in eligibility.</i></p>	<p>scope of any reevaluation of a student who has been determined, after the full individual and initial evaluation, to be eligible for the district's special education program on the basis of a visual impairment must be determined, in accordance with 34 CFR, §§300.122 and 300.303-300.311, by a multidisciplinary team that includes an appropriately certified orientation and mobility specialist.</p> <p>...</p> <p>Last Amended: December 2, 2015, 40 TexReg 8642</p> <p>§ 89.1070. Graduation Requirements. [Excerpt]</p> <p>...</p> <p>(h) 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)(A), (B), or (C) or (g)(4)(A), (B), or (C) of this section.</p> <p>(i) Students who participate in graduation ceremonies but who are not graduating under subsections (b)(2)(A), (B), or (C) or (g)(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 (h) of this section.</p> <p>...</p> <p>Last Amended: September 16, 2015, 40 TexReg 6107</p>	<p>includes, as provided by commissioner rule, a person described by Subsection (c-1)(1)(A).</p> <p>...</p> <p>Last Amended: 83rd Leg., R.S., Ch. 505 (S.B. 39), Sec. 1, eff. June 14, 2013 83rd Leg., R.S., Ch. 637 (H.B. 590), Sec. 1, eff. September 1, 2013</p> <p>§ 38.003. Screening and Treatment for Dyslexia and Related Disorders. [Excerpt]</p> <p>...</p> <p>(b-1) Unless otherwise provided by law, a student determined to have dyslexia during testing under Subsection (a) or accommodated because of dyslexia may not be retested for dyslexia for the purpose of reassessing the student's need for accommodations until the district reevaluates the information obtained from previous testing of the student.</p> <p>...</p> <p>Last Amended: 82nd Leg., R.S., Ch. 635 (S.B. 866), Sec. 3, eff. June 17, 2011</p>
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<p>(1) Except as provided in paragraph (e)(2) of this section, a public agency must evaluate a child with a disability in accordance with §§300.304 through 300.311 before determining that the child is no longer a child with a disability.</p> <p>(2) The evaluation described in paragraph (e)(1) of this section is not required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.</p> <p>(3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.</p> <p>(Authority: 20 U.S.C. 1414(c)) Last Amended: 72 FR 61307, Oct. 30, 2007</p> <p>§ 300.306 Determination of eligibility.</p> <p>(a) General. Upon completion of the administration of assessments and other evaluation measures—</p> <p>(1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in §300.8, in accordance with paragraph (c) of this section and the educational needs of the child; and</p> <p>(2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.</p> <p>(b) Special rule for eligibility determination. A child must not be determined to be a child with a disability under this part—</p> <p>(1) If the determinant factor for that determination is—</p> <p>(i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA as such section was in effect on the day before the date of enactment of the Every Student Succeeds Act (December 9, 2015));</p> <p>(ii) Lack of appropriate instruction in math; or</p> <p>(iii) Limited English proficiency; and</p> <p>(2) If the child does not otherwise meet the eligibility criteria under §300.8(a).</p> <p>(c) Procedures for determining eligibility and educational need.</p> <p>(1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under §300.8, and the educational needs of the child, each public agency must—</p> <p>(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent</p>	<p>§ 89.1040. Eligibility Criteria. [Excerpt]</p> <p>...</p> <p>(b) Eligibility determination. The determination of whether a student is eligible for special education and related services is made by the student's admission, review, and dismissal committee. Any evaluation or re-evaluation of a student must be conducted in accordance with 34 CFR, §§300.301-300.306 and 300.122. The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility must include, but is not limited to, the following:</p> <p>(1) a licensed specialist in school psychology (LSSP), an educational diagnostician, or other appropriately certified or licensed practitioner with experience and training in the area of the disability; or</p> <p>(2) a licensed or certified professional for a specific eligibility category defined in subsection (c) of this section.</p> <p>...</p> <p>Last Amended: December 2, 2015, 40 TexReg 8642</p> <p>22 TAC § 465.38. Psychological Services in the Schools. [Excerpt]</p> <p>(a) This rule acknowledges the unique difference in the delivery of school psychological services in the public schools from psychological services in the private sector. The Board recognizes the purview of the State Board of Education and the Texas Education Agency in safeguarding the rights of public school children in Texas. The mandated multidisciplinary team decision making, hierarchy of supervision, regulatory provisions, and past traditions of school psychological service delivery both nationally and in Texas, among other factors, allow for rules of practice in the</p>	<p>§ 29.003. Eligibility Criteria.</p> <p>(a) The agency shall develop specific eligibility criteria based on the general classifications established by this section with reference to contemporary diagnostic or evaluative terminologies and techniques. Eligible students with disabilities shall enjoy the right to a free appropriate public education, which may include instruction in the regular classroom, instruction through special teaching, or instruction through contracts approved under this subchapter. Instruction shall be supplemented by the provision of related services when appropriate.</p> <p>...</p> <p>Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995</p> <p>§ 30.002. Education for Children with Visual Impairments. [Excerpt]</p> <p>...</p> <p>(c-1) To implement Subsection (c)(1) and to determine a child's eligibility for a school district's special education program on the basis of a visual impairment, the full individual and initial evaluation of the student required by Section 29.004 must, in accordance with commissioner rule:</p> <p>...</p> <p>(2) provide for a person who is appropriately certified as an orientation and mobility specialist to participate, as part of a multidisciplinary team, in evaluating data on which the determination of the child's eligibility is based.</p> <p>...</p> <p>Last Amended: 83rd Leg., R.S., Ch. 505 (S.B. 39), Sec. 1, eff. June 14, 2013 83rd Leg., R.S., Ch. 637 (H.B. 590), Sec. 1, eff. September 1, 2013</p>
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<p>input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and</p> <p>(ii) Ensure that information obtained from all of these sources is documented and carefully considered.</p> <p>(2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§300.320 through 300.324.</p> <p>(Authority: 20 U.S.C. 1414(b)(4) and (5)) Last Amended: 82 FR 29761, June 30, 2017</p> <p>Additional Procedures for Identifying Children With Specific Learning Disabilities</p> <p>§ 300.307 Specific learning disabilities.</p> <p>(a) <i>General.</i> A State must adopt, consistent with §300.309, criteria for determining whether a child has a specific learning disability as defined in §300.8(c)(10). In addition, the criteria adopted by the State—</p> <p>(1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in §300.8(c)(10);</p> <p>(2) Must permit the use of a process based on the child's response to scientific, research-based intervention; and</p> <p>(3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in §300.8(c)(10).</p> <p>(b) <i>Consistency with State criteria.</i> A public agency must use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability.</p> <p>(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6)) Last Amended: 71 FR 46786, Aug. 14, 2006</p> <p>§ 300.308 Additional group members.</p> <p>The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in §300.8, must be made by the child's parents and a team of</p>	<p>public schools which reflect these occupational distinctions from the private practice of psychology.</p> <p>(b) Scope of Practice.</p> <p>(1) A Licensed Specialist in School Psychology (LSSP) means a person who is trained to address psychological and behavioral problems manifested in and associated with educational systems by utilizing psychological concepts and methods in programs or actions which attempt to improve the learning, adjustment and behavior of students. Such activities include, but are not limited to, addressing special education eligibility, conducting manifestation determinations, and assisting with the development and implementation of individual educational programs, conducting behavioral assessments, and designing and implementing behavioral interventions and supports.</p> <p>(2) The assessment of emotional or behavioral disturbance, for educational purposes, using psychological techniques and procedures is considered the practice of psychology.</p> <p>...</p> <p>Last Amended: April 20, 2016, 41 TexReg 2770</p>	<p>Texas Occupations Code</p> <p>§ 501.503. Criminal Penalty.</p> <p>(a) A person commits an offense if the person engages in the practice of psychology or represents that the person is a psychologist in violation of this chapter.</p> <p>(b) An offense under this section is a Class A misdemeanor.</p> <p>(c) Each day a violation occurs is a separate offense.</p> <p>Last Amended: 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999</p>
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qualified professionals, which must include—

- (a) (1) The child's regular teacher; or
- (2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or
- (3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and

(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))
 Last Amended: 71 FR 46786, Aug. 14, 2006

§ 300.309 Determining the existence of a specific learning disability.

(a) The group described in §300.306 may determine that a child has a specific learning disability, as defined in §300.8(c)(10), if—

- (1) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:
 - (i) Oral expression.
 - (ii) Listening comprehension.
 - (iii) Written expression.
 - (iv) Basic reading skill.
 - (v) Reading fluency skills.
 - (vi) Reading comprehension.
 - (vii) Mathematics calculation.
 - (viii) Mathematics problem solving.
- (2)
 - (i) The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child's response to scientific, research-based intervention; or
 - (ii) The child 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 by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with §§300.304 and 300.305; and

§ 89.1040. Eligibility Criteria. [Excerpt]

...

(c) Eligibility definitions.

...

(9) Learning disability.

- (A) 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 in 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) data that demonstrates the student was provided appropriate instruction in reading (as described in 20 United States Code (USC), §6368(3)), and/or mathematics within general education settings delivered by qualified personnel; and
 - (ii) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal evaluation of student progress during instruction. 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.
- (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(c)(10), in accordance with the provisions in 34 CFR, §§300.307-300.311; and

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<p>(3) The group determines that its findings under paragraphs (a)(1) and (2) of this section are not primarily the result of—</p> <ul style="list-style-type: none"> (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. <p>(b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in §§300.304 through 300.306—</p> <ul style="list-style-type: none"> (1) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and (2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents. <p>(c) The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in §§300.301 and 300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in §300.306(a)(1)—</p> <ul style="list-style-type: none"> (1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (b)(1) and (b)(2) of this section; and (2) Whenever a child is referred for an evaluation. <p>Last Amended: 82 FR 31912, July 11, 2017</p> <p>§ 300.310 Observation.</p> <p>(a) The public agency must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty.</p> <p>(b) The group described in §300.306(a)(1), in determining whether a child has a specific learning disability, must decide to—</p> <ul style="list-style-type: none"> (1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or (2) Have at least one member of the group described in §300.306(a)(1) conduct an observation of the child's academic performance in the regular classroom after the 	<ul style="list-style-type: none"> (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 scientific, research-based intervention; and (l) does not make sufficient progress when provided a process based on the student's response to scientific, research-based intervention (as defined in 20 USC, §7801(37)), 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 (ll) 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. <p>...</p> <p>Last Amended: December 2, 2015, 40 TexReg 8642</p>	
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<p>child has been referred for an evaluation and parental consent, consistent with §300.300(a), is obtained.</p> <p>(c) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.</p> <p>(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6)) Last Amended: 71 FR 46787, Aug. 14, 2006</p> <p>§ 300.311 Specific documentation for the eligibility determination.</p> <p>(a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in §300.306(a)(2), must contain a statement of—</p> <ol style="list-style-type: none"> (1) Whether the child has a specific learning disability; (2) The basis for making the determination, including an assurance that the determination has been made in accordance with §300.306(c)(1); (3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning; (4) The educationally relevant medical findings, if any; (5) Whether— <ol style="list-style-type: none"> (i) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with §300.309(a)(1); and (ii) <ol style="list-style-type: none"> (A) The child does not make sufficient progress to meet age or State-approved grade-level standards consistent with §300.309(a)(2)(i); or (B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development consistent with §300.309(a)(2)(ii); (6) The determination of the group concerning the effects of a visual, hearing, motor disability, or an intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and (7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention— <ol style="list-style-type: none"> (i) The instructional strategies used and the student-centered data collected; and (ii) The documentation that the child's parents were notified about— <ol style="list-style-type: none"> (A) The State's policies regarding the amount and nature of student performance data that would 		
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be collected and the general education services that would be provided;

(B) Strategies for increasing the child's rate of learning; and

(C) The parents' right to request an evaluation.

(b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

Last Amended: 82 FR 31913, July 11, 2017

Individualized Education Programs

§ 300.320 Definition of individualized education program.

- (a) *General.* As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include—
- (1) A statement of the child's present levels of academic achievement and functional performance, including—
 - (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
 - (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;
 - (2) (i) A statement of measurable annual goals, including academic and functional goals designed to—
 - (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
 - (B) Meet each of the child's other educational needs that result from the child's disability;
 (ii) For children with disabilities who take alternate assessments aligned to alternate academic achievement standards, a description of benchmarks or short-term objectives;
 - (3) A description of—
 - (i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and
 - (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
 - (4) A statement of the special education and related services

§ 89.61. Contracting for Residential Educational Placements for Students with Disabilities. [Excerpt]

- (a) Residential placement. A school district may contract for residential placement of a student when the student's admission, review, and dismissal (ARD) committee determines that a residential placement is necessary in order for the student to receive a free appropriate public education (FAPE).
- ...
- (4) The school district has the following responsibilities when making a residential placement.
- ...
- (B) For each student, the services which the school district is unable to provide and which the facility will provide shall be listed in the student's IEP.
 - (C) For each student, the ARD committee shall establish, in writing, criteria and estimated timelines for the student's return to the school district.
 - (D) The appropriateness of the facility for each student residentially placed shall be documented in the IEP. General screening by a regional education service center is not sufficient to meet the requirements of this subsection.
 - (E) The school district shall make an initial and an annual on-site visit to verify that the residential facility can, and will, provide the services listed in the student's IEP which the facility has agreed to provide to the student.
 - (F) For each student placed in a residential facility (both initial and continuing placements), the school district shall verify, during the initial residential placement ARD committee meeting and each subsequent annual ARD committee meeting, that:
 - (i) the facility meets minimum standards for health and safety;
 - (ii) residential placement is needed and is documented in the IEP; and
 - (iii) the educational program provided at the

§ 29.005. Individualized Education Program. [Excerpt]

- ...
- (b) The committee shall develop the individualized education program by agreement of the committee members or, if those persons cannot agree, by an alternate method provided by the agency. Majority vote may not be used to determine the individualized education program.
- (b-1) The written statement of the individualized education program must document the decisions of the committee with respect to issues discussed at each committee meeting. The written statement must 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 administrator agreed or disagreed with the decisions of the committee.
- (c) If the individualized education program is not developed by agreement, the written statement of the program required under 20 U.S.C. Section 1414(d) must include the basis of the disagreement. Each member of the committee who disagrees with the individualized education program developed by the committee is entitled to include a statement of disagreement in the written statement of the program.
- ...
- (e) The commissioner by rule may require a school district to include in the individualized education program of a student with autism or another pervasive developmental disorder any information or requirement determined necessary to ensure the student receives a free appropriate public education as required under the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.).
- ...
- (g) The committee may determine that a behavior improvement plan or a behavioral intervention plan is appropriate for a student for whom the committee has developed an individualized education program. If the committee makes that

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<p>and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child—</p> <ul style="list-style-type: none"> (i) To advance appropriately toward attaining the annual goals; (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section; <p>(5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;</p> <p>(6) (i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and</p> <p>(ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why—</p> <ul style="list-style-type: none"> (A) The child cannot participate in the regular assessment; and (B) The particular alternate assessment selected is appropriate for the child; and <p>(7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.</p> <p>(b) <i>Transition services.</i> Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include—</p> <ul style="list-style-type: none"> (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 child in reaching those goals. <p>(c) <i>Transfer of rights at age of majority.</i> Beginning not later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of</p>	<p>residential facility is appropriate and the placement is the least restrictive environment for the student.</p> <p>(G) The placement of more than one student, in the same residential facility, may be considered in the same on-site visit to a facility; however, the IEP of each student must be individually reviewed and a determination of appropriateness of placement and service must be made for each student.</p> <p>...</p> <p>Last Amended: August 24, 2010, 35 TexReg 7212</p> <p>§ 89.63. Instructional Arrangements and Settings.</p> <p>(a) Each local school district shall be able to provide services with special education personnel to students with disabilities in order to meet the special needs of those students in accordance with 34 Code of Federal Regulations, §§300.114-300.118.</p> <p>(b) Subject to §89.1075(e) of this title (relating to General Program Requirements and Local District Procedures) for the purpose of determining the student's instructional arrangement/setting, the regular school day is defined as the period of time determined appropriate by the admission, review, and dismissal (ARD) committee.</p> <p>(c) Instructional arrangements/settings shall be based on the individual needs and the individualized education programs (IEPs) of eligible students receiving special education services and shall include the following.</p> <ul style="list-style-type: none"> (1) Mainstream. This instructional arrangement/setting is for providing special education and related services to a student in the regular classroom in accordance with the student's IEP. Qualified special education personnel must be involved in the implementation of the student's IEP through the provision of direct, indirect and/or support services to the student, and/or the student's regular classroom teacher(s) necessary to enrich the regular classroom and enable student success. The student's IEP must specify the services that will be provided by qualified special education personnel to enable the student to appropriately progress in the general education curriculum and/or appropriately advance in achieving the goals set out in the student's IEP. Examples of services provided in this instructional arrangement include, but are not limited to, direct instruction, helping teacher, team teaching, co-teaching, interpreter, education aides, curricular or instructional modifications/accommodations, special materials/equipment, positive classroom behavioral interventions and supports, consultation with the student and his/her regular classroom teacher(s) regarding the student's progress in regular education classes, staff development, and reduction of ratio of students to instructional staff. (2) Homebound. This instructional arrangement/setting is for 	<p>determination, the behavior improvement plan or the behavioral intervention plan shall be included as part of the student's individualized education program and provided to each teacher with responsibility for educating the student.</p> <p>Last Amended: 84th Leg., R.S., Ch. 1192 (S.B. 1259), Sec. 2, eff. June 19, 2015</p> <p>§ 29.011. Transition Planning. [Excerpt]</p> <p>(a) The commissioner shall by rule adopt procedures for compliance with federal requirements relating to transition services for students who are enrolled in special education programs under this subchapter. The procedures must specify the manner in which a student's admission, review, and dismissal committee must consider, and if appropriate, address the following issues in the student's individualized education program:</p> <ul style="list-style-type: none"> (1) appropriate student involvement in the student's transition to life outside the public school system; (2) if the student is younger than 18 years of age, appropriate involvement in the student's transition by the student's parents and other persons invited to participate by: <ul style="list-style-type: none"> (A) the student's parents; or (B) the school district in which the student is enrolled; (3) if the student is at least 18 years of age, involvement in the student's transition and future by the student's parents and other persons, if the parent or other person: <ul style="list-style-type: none"> (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 Chapter 1357, Estates Code; (4) appropriate postsecondary education options, including preparation for postsecondary-level coursework; (5) an appropriate functional vocational evaluation; (6) appropriate employment goals and objectives; (7) if the student is at least 18 years of age, 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; (8) appropriate independent living goals and objectives; (9) 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
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<p>majority under §300.520.</p> <p>(d) <i>Construction.</i> Nothing in this section shall be construed to require—</p> <p>(1) That additional information be included in a child's IEP beyond what is explicitly required in section 614 of the Act; or</p> <p>(2) The IEP Team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.</p> <p>(Authority: 20 U.S.C. 1414(d)(1)(A) and (d)(6)) Last Amended: 72 FR 61307, Oct. 30, 2007</p>	<p>providing special education and related services to students who are served at home or hospital bedside.</p> <p>(A) Students served on a homebound or hospital bedside basis are expected to be confined for a minimum of four consecutive weeks as documented by a physician licensed to practice in the United States. Homebound or hospital bedside instruction may, as provided by local district policy, also be provided to chronically ill students who are expected to be confined for any period of time totaling at least four weeks throughout the school year as documented by a physician licensed to practice in the United States. The student's ARD committee shall determine the amount of services to be provided to the student in this instructional arrangement/setting in accordance with federal and state laws, rules, and regulations, including the provisions specified in subsection (b) of this section.</p> <p>(B) Home instruction may also be used for services to infants and toddlers (birth through age 2) and young children (ages 3-5) when determined appropriate by the child's individualized family services plan (IFSP) committee or ARD committee. This arrangement/setting also applies to school districts described in Texas Education Code, §29.014.</p> <p>(3) Hospital class. This instructional arrangement/setting is for providing special education instruction in a classroom, in a hospital facility, or a residential care and treatment facility not operated by the school district. If the students residing in the facility are provided special education services outside the facility, they are considered to be served in the instructional arrangement in which they are placed and are not to be considered as in a hospital class.</p> <p>(4) Speech therapy. This instructional arrangement/setting is for providing speech therapy services whether in a regular education classroom or in a setting other than a regular education classroom. When the only special education or related service provided to a student is speech therapy, then this instructional arrangement may not be combined with any other instructional arrangement.</p> <p>(5) Resource room/services. This instructional arrangement/setting is for providing special education and related services to a student in a setting other than regular education for less than 50% of the regular school day.</p> <p>(6) Self-contained (mild, moderate, or severe) regular campus. This instructional arrangement/setting is for providing special education and related services to a student who is in a self-contained program for 50% or more of the regular school day on a regular school campus.</p> <p>(7) Off-home campus. This instructional arrangement/setting is for providing special education and related services to</p>	<p>waiting list for public benefits available to the student, such as a waiver program established under Section 1915(c), Social Security Act (42 U.S.C. Section 1396n(c)); and</p> <p>(10) the use and availability of appropriate:</p> <p>(A) supplementary aids, services, curricula, and other opportunities to assist the student in developing decision-making skills; and</p> <p>(B) supports and services to foster the student's independence and self-determination, including a supported decision-making agreement under Chapter 1357, Estates Code.</p> <p>(a-1) A student's admission, review, and dismissal committee shall annually review the issues described by Subsection (a) and, if necessary, update the portions of the student's individualized education program that address those issues.</p> <p>(a-2) The commissioner shall develop and post on the agency's Internet website a list of services and public benefits for which referral may be appropriate under Subsection (a)(9).</p> <p>...</p> <p>Last Amended: 85th Leg., R.S., Ch. 1044 (H.B. 1886), Sec. 2, eff. June 15, 2017 85th Leg., R.S., Ch. 574 (S.B. 748), Sec. 1, eff. June 9, 2017</p> <p>§ 29.0111. Beginning of Transition Planning. Appropriate state transition planning under the procedure adopted under Section 29.011 must begin for a student not later than when the student reaches 14 years of age. Last Amended: 82nd Leg., R.S., Ch. 1250 (S.B. 1788), Sec. 3, eff. June 17, 2011</p> <p>§ 29.0112. Transition and Employment Guide. ...</p> <p>(e) A school district shall:</p> <p>(1) post the transition and employment guide on the district's website if the district maintains a website;</p> <p>(2) provide written information and, if necessary, assistance to a student or parent regarding how to access the electronic version of the guide at:</p> <p>(A) the first meeting of the student's admission, review, and dismissal committee at which transition is discussed; and</p> <p>(B) the first committee meeting at which transition is discussed that occurs after the date on which the guide is updated; and</p> <p>...</p> <p>Last Amended: 85th Leg., R.S., Ch. 1044 (H.B. 1886), Sec. 3, eff. June 15, 2017 85th Leg., R.S., Ch. 574 (S.B. 748), Sec. 2, eff. June 9, 2017</p>
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	<p>the following, including, but not limited to, students at South Texas Independent School District and Windham Independent School District:</p> <ul style="list-style-type: none"> (A) a student who is one of a group of students from more than one school district served in a single location when a free appropriate public education is not available in the respective sending district; (B) a student in a community setting or environment (not operated by a school district) that prepares the student for postsecondary education/training, integrated employment, and/or independent living in coordination with the student's individual transition goals and objectives, including a student with regularly scheduled instruction or direct involvement provided by school district personnel, or a student in a facility not operated by a school district (other than a nonpublic day school) with instruction provided by school district personnel; or (C) a student in a self-contained program at a separate campus operated by the school district that provides only special education and related services. <ul style="list-style-type: none"> (8) Nonpublic day school. This instructional arrangement/setting is for providing special education and related services to students through a contractual agreement with a nonpublic school for special education. (9) Vocational adjustment class/program. This instructional arrangement/setting is for providing special education and related services to a student who is placed on a job (paid or unpaid unless otherwise prohibited by law) with regularly scheduled direct involvement by special education personnel in the implementation of the student's IEP. This instructional arrangement/setting shall be used in conjunction with the student's individual transition goals and only after the school district's career and technical education classes have been considered and determined inappropriate for the student. (10) Residential care and treatment facility (not school district resident). This instructional arrangement/setting is for providing special education instruction and related services to students who reside in care and treatment facilities and whose parents do not reside within the boundaries of the school district providing educational services to the students. In order to be considered in this arrangement, the services must be provided on a school district campus. If the instruction is provided at the facility, rather than on a school district campus, the instructional arrangement is considered to be the hospital class arrangement/setting rather than this instructional arrangement. Students with disabilities who reside in these facilities may be included in the average daily attendance of the district in the same way as all other students receiving special education. (11) State supported living center. This instructional arrangement/setting is for providing special education 	<p>§ 30.002. Education for Children with Visual Impairments. [Excerpt]</p> <p>...</p> <ul style="list-style-type: none"> (c) The comprehensive statewide plan for the education of children with visual impairments must: <ul style="list-style-type: none"> ... (4) include methods to ensure that children with visual impairments receiving special education services in school districts receive, before being placed in a classroom setting or within a reasonable time after placement: <ul style="list-style-type: none"> (A) evaluation of the impairment; and (B) instruction in an expanded core curriculum, which is required for students with visual impairments to succeed in classroom settings and to derive lasting, practical benefits from the education provided by school districts, including instruction in: <ul style="list-style-type: none"> (i) compensatory skills, such as braille and concept development, and other skills needed to access the rest of the curriculum; (ii) orientation and mobility; (iii) social interaction skills; (iv) career planning; (v) assistive technology, including optical devices; (vi) independent living skills; (vii) recreation and leisure enjoyment; (viii) self-determination; and (ix) sensory efficiency; <p>...</p> <ul style="list-style-type: none"> (e) Each eligible blind or visually impaired student is entitled to receive educational programs according to an individualized education program that: <ul style="list-style-type: none"> (1) is developed in accordance with federal and state requirements for providing special education services; (2) is developed by a committee composed as required by federal law; (3) reflects that the student has been provided a detailed explanation of the various service resources available to the student in the community and throughout the state; (4) provides a detailed description of the arrangements made to provide the student with the evaluation and instruction required under Subsection (c)(4); and (5) sets forth the plans and arrangements made for contacts with and continuing services to the student beyond regular school hours to ensure the student learns the skills and receives the instruction required under Subsection (c)(4)(B). (f) In the development of the individualized education program for a functionally blind student, proficiency in braille reading and
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	<p>and related services to a student who resides at a state supported living center when the services are provided at the state supported living center location. If services are provided on a local school district campus, the student is considered to be served in the residential care and treatment facility arrangement/setting.</p> <p>(d) The appropriate instructional arrangement for students from birth through the age of two with visual and/or auditory impairments shall be determined in accordance with the IFSP, current attendance guidelines, and the agreement memorandum between the Texas Education Agency (TEA) and the Department of Assistive and Rehabilitative Services (DARS) Early Childhood Intervention (ECI) Services.</p> <p>(e) For nonpublic day school placements, the school district or shared service arrangement shall submit information to the TEA indicating the students' identification numbers, initial dates of placement, and the names of the facilities with which the school district or shared service arrangement is contracting. The school district or shared service arrangement shall not count contract students' average daily attendance as eligible. The TEA shall determine the number of contract students reported in full-time equivalents and pay state funds to the district according to the formula prescribed in law.</p> <p>(f) Other program options which may be considered for the delivery of special education and related services to a student may include the following:</p> <ol style="list-style-type: none"> (1) contracts with other school districts; and (2) other program options as approved by the TEA. <p>Last Amended: January 1, 2015, 39 TexReg 10443</p> <p>§ 89.1049. Parental Rights Regarding Adult Students. [Excerpt]</p> <p>(a) In accordance with 34 Code of Federal Regulations (CFR), §300.320(c) and §300.520, and Texas Education Code (TEC), §29.017, beginning at least one year before a student reaches 18 years of age, the student's individualized education program (IEP) must include a statement that the student has been informed that, unless the student's parent or other individual has been granted guardianship of the student under the Probate Code, Chapter XIII, Guardianship, all rights granted to the parent under the Individuals with Disabilities Education Act (IDEA), Part B, other than the right to receive any notice required under IDEA, Part B, will transfer to the student upon reaching age 18. After the student reaches the age of 18, except as provided by subsection (b) of this section, the school district shall provide any notice required under IDEA, Part B, to both the adult student and the parent.</p> <p>...</p> <p>Last Amended: November 11, 2007, 32 TexReg 8129</p> <p>§ 89.1055. Content of the Individualized Education Program (IEP).</p> <p>(a) The individualized education program (IEP) developed by the admission, review, and dismissal (ARD) committee for each</p>	<p>writing is presumed to be essential for the student's satisfactory educational progress. Each functionally blind student is entitled to braille reading and writing instruction that is sufficient to enable the student to communicate with the same level of proficiency as other students of comparable ability who are at the same grade level. Braille instruction may be used in combination with other special education services appropriate to the student's educational needs. The assessment of each functionally blind student for the purpose of developing the student's individualized education program must include documentation of the student's strengths and weaknesses in braille skills. Each person assisting in the development of a functionally blind student's individualized education program shall receive information describing the benefits of braille instruction. Each functionally blind student's individualized education program must specify the appropriate learning medium based on the assessment report and ensure that instruction in braille will be provided by a teacher certified to teach students with visual impairments. For purposes of this subsection, the agency shall determine the criteria for a student to be classified as functionally blind.</p> <p>...</p> <p>Last Amended: 83rd Leg., R.S., Ch. 505 (S.B. 39), Sec. 1, eff. June 14, 2013 83rd Leg., R.S., Ch. 637 (H.B. 590), Sec. 1, eff. September 1, 2013</p> <p>§ 33.081. Extracurricular Activities. [Excerpt]</p> <p>...</p> <p>(c) A student who is enrolled in a school district in this state or who participates in a University Interscholastic League competition shall be suspended from participation in any extracurricular activity sponsored or sanctioned by the school district or the University Interscholastic League after a grade evaluation period in which the student received a grade lower than the equivalent of 70 on a scale of 100 in any academic class other than a course described by Subsection (d-1). A suspension continues for at least three school weeks and is not removed during the school year until the conditions of Subsection (d) are met. A suspension does not last beyond the end of a school year. For purposes of this subsection, "grade evaluation period" means:</p> <ol style="list-style-type: none"> (1) the six-week grade reporting period; or (2) the first six weeks of a semester and each grade reporting period thereafter, in the case of a district with a grade reporting period longer than six weeks. <p>(d) Until the suspension is removed under this subsection or the school year ends, a school district shall review the grades of a student suspended under Subsection (c) at the end of each three-week period following the date on which the suspension began. At the time of a review, the suspension is removed if the student's grade in each class, other than a course described by Subsection (d-1), is equal to or greater than the equivalent of 70 on a scale of 100. The principal and each of the student's teachers shall make the determination</p>
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	<p>student with a disability must comply with the requirements of 34 Code of Federal Regulations (CFR), §300.320 and §300.324.</p> <p>(b) The IEP must include a statement of any individual appropriate and allowable accommodations in the administration of assessment instruments developed in accordance with Texas Education Code (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. 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 IEP must include a statement explaining:</p> <ol style="list-style-type: none"> (1) why the student cannot participate in the general assessment; and (2) why the particular alternate assessment selected is appropriate for the student. <p>(c) 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 will be addressed during ESY services.</p> <p>(d) For students with visual impairments, from birth through 21 years of age, the IEP or individualized family services plan (IFSP) must also meet the requirements of TEC, §30.002(e).</p> <p>(e) For students eligible under §89.1040(c)(1) of this title (relating to Eligibility Criteria), the strategies described in this subsection must be considered, based on peer-reviewed, research-based educational programming practices to the extent practicable and, when needed, addressed in the IEP:</p> <ol style="list-style-type: none"> (1) extended educational programming (for example: extended day and/or extended school year services that consider the duration of programs/settings based on assessment of 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 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: <ol style="list-style-type: none"> (A) antecedent manipulation, replacement behaviors, reinforcement strategies, and data-based decisions; and 	<p>concerning the student's grades.</p> <p>...</p> <p>(e) Suspension of a student with a disability that significantly interferes with the student's ability to meet regular academic standards must be based on the student's failure to meet the requirements of the student's individualized education program. The determination of whether a disability significantly interferes with a student's ability to meet regular academic standards must be made by the student's admission, review, and dismissal committee. For purposes of this subsection, "student with a disability" means a student who is eligible for a district's special education program under Section 29.003(b).</p> <p>...</p> <p>Last Amended: 80th Leg., R.S., Ch. 1327 (S.B. 1517), Sec. 1, eff. June 15, 2007</p> <p>§ 39.023. Adoption and Administration of Instruments. [Excerpt]</p> <p>...</p> <p>Text of subsection effective on or before September 1, 2015; see note following section for effective date information; effective until September 1, 2017</p> <p>(a) The agency shall adopt or develop appropriate criterion-referenced assessment instruments designed to assess essential knowledge and skills in reading, writing, mathematics, social studies, and science. Except as provided by Subsection (a-2), all students, other than students assessed under Subsection (b) or (l) or exempted under Section 39.027, shall be assessed in:</p> <ol style="list-style-type: none"> (1) mathematics, in grades three and five without the aid of technology and in grade eight with the aid of technology on any assessment instrument that includes algebra; (2) reading, in grades three, five, and eight; (3) writing, including spelling and grammar, in grades four and seven; (4) social studies, in grade eight; and (5) science, in grades five and eight. <p>Text of subsection effective September 1, 2017; see note following section for effective date information</p> <p>(a) The agency shall adopt or develop appropriate criterion-referenced assessment instruments designed to assess essential knowledge and skills in reading, writing, mathematics, social studies, and science. Except as provided by Subsection (a-2), all students, other than students assessed under Subsection (b) or (l) or exempted under Section 39.027, shall be assessed in:</p> <ol style="list-style-type: none"> (1) mathematics, annually in grades three through seven without the aid of technology and in grade eight with the aid of technology on any assessment instrument that includes algebra;
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	<ul style="list-style-type: none"> (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; (5) beginning at any age, consistent with subsection (h) of this section, futures planning for integrated living, work, community, and educational environments that considers skills necessary to function in current and post-secondary environments; (6) parent/family training and support, provided by qualified personnel with experience in Autism Spectrum Disorders (ASD), that, for example: <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (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: trained peer facilitators (e.g., circle of friends), video modeling, social stories, and role playing); (10) professional educator/staff support (for example: training provided to personnel who work with the student to assure the correct implementation of techniques and strategies described in the IEP); and (11) teaching strategies based on peer reviewed, research-based practices for students with ASD (for example: 	<ul style="list-style-type: none"> (2) reading, annually in grades three through eight; (3) writing, including spelling and grammar, in grades four and seven; (4) social studies, in grade eight; (5) science, in grades five and eight; and (6) any other subject and grade required by federal law. ... Text of subsection effective on or before September 1, 2015; see note following section for effective date information (a-4) A student shall be assessed in grade four in a subject for which an assessment instrument is administered under Subsection (a) in grade three if, on the final assessment instrument in that subject administered under Subsection (a) to the student in grade three during the preceding school year, the student did not achieve a score equal to or greater than the minimum satisfactory adjusted scale score for that assessment instrument, as determined under Subsection (a-3). (a-5) A student shall be assessed in grade six in a subject for which an assessment instrument is administered under Subsection (a) in grade five if, on the final assessment instrument in that subject administered under Subsection (a) to the student in grade five during the preceding school year, the student did not achieve a score equal to or greater than the minimum satisfactory adjusted scale score for that assessment instrument, as determined under Subsection (a-3). (a-6) A student shall be assessed in grade seven in a subject for which an assessment instrument was administered under Subsection (a-5) to the student in grade six if, on the final assessment instrument in that subject administered to the student in grade six during the preceding school year, the student did not achieve a score equal to or greater than the minimum satisfactory adjusted scale score for that assessment instrument, as determined under Subsection (a-3). (a-7) A student assessed in mathematics under Subsection (a-4), (a-5), or (a-6) shall be assessed without the aid of technology. (a-8) A school district or open-enrollment charter school may, for its own use in determining whether students are performing at a satisfactory level, administer to a student at the appropriate grade level, other than a student required to be assessed, an assessment instrument developed for purposes of Subsection (a-4), (a-5), or (a-6). At the request of a district or open-enrollment charter school, the agency shall provide, allow for the administration of, and score each assessment instrument administered under this subsection in the same manner and at the same cost as for assessment instruments required to be administered under the applicable subsection. The results of an assessment instrument administered under this subsection may not be included as an indicator of achievement under Section 39.053 or any other provision. ... (a-10) This subsection and Subsections (a-3), (a-4), (a-5), (a-6), (a-
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	<p>those associated with discrete-trial training, visual supports, applied behavior analysis, structured learning, augmentative communication, or social skills training).</p> <p>(f) If the ARD committee determines that services are not needed in one or more of the areas specified in subsection (e) of this section, the IEP must include a statement to that effect and the basis upon which the determination was made.</p> <p>(g) 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.</p> <p>(h) In accordance with TEC, §29.011 and §29.0111, not later than when a student reaches 14 years of age, the ARD committee must consider, and if appropriate, address the following issues in the IEP:</p> <ol style="list-style-type: none"> (1) appropriate student involvement in the student's transition to life outside the public school system; (2) if the student is younger than 18 years of age, appropriate parental involvement in the student's transition; (3) if the student is at least 18 years of age, appropriate parental involvement in the student's transition, if the parent is invited to participate by the student or the school district in which the student is enrolled; (4) any postsecondary education options; (5) a functional vocational evaluation; (6) employment goals and objectives; (7) if the student is at least 18 years of age, the availability of age-appropriate instructional environments; (8) independent living goals and objectives; and (9) appropriate circumstances for referring a student or the student's parents to a governmental agency for services. <p>(i) In accordance with 34 CFR, §300.320(b), beginning not later than the first IEP to be in effect when the student turns 16 years of age, or younger if determined appropriate by the ARD committee, and updated annually thereafter, the IEP must include the following:</p> <ol style="list-style-type: none"> (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 developed under paragraph (1) of this subsection. <p>(j) 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:</p> <ol style="list-style-type: none"> (1) the date of the meeting; 	<p>7), (a-8), and (a-9) expire September 1, 2017.</p> <p>...</p> <p>Text of subsection effective on or before September 1, 2015; see note following section for effective date information; effective until September 1, 2017</p> <p>(b) The agency shall develop or adopt appropriate criterion-referenced alternative assessment instruments to be administered to a student in a special education program under Subchapter A, Chapter 29, for whom an assessment instrument adopted under Subsection (a) or, to the extent applicable, Subsection (a-4), (a-5), or (a-6), even with allowable accommodations, would not provide an appropriate measure of student achievement, as determined by the student's admission, review, and dismissal committee, including assessment instruments approved by the commissioner that measure growth. The assessment instruments developed or adopted under this subsection, including the assessment instruments approved by the commissioner, must, to the extent allowed under federal law, provide a district with options for the assessment of students under this subsection. The agency may not adopt a performance standard that indicates that a student's performance on the alternate assessment does not meet standards if the lowest level of the assessment accurately represents the student's developmental level as determined by the student's admission, review, and dismissal committee.</p> <p>Text of subsection effective September 1, 2017; see note following section for effective date information</p> <p>(b) The agency shall develop or adopt appropriate criterion-referenced alternative assessment instruments to be administered to each student in a special education program under Subchapter A, Chapter 29, for whom an assessment instrument adopted under Subsection (a), even with allowable accommodations, would not provide an appropriate measure of student achievement, as determined by the student's admission, review, and dismissal committee, including assessment instruments approved by the commissioner that measure growth. The assessment instruments developed or adopted under this subsection, including the assessment instruments approved by the commissioner, must, to the extent allowed under federal law, provide a district with options for the assessment of students under this subsection. The agency may not adopt a performance standard that indicates that a student's performance on the alternate assessment does not meet standards if the lowest level of the assessment accurately represents the student's developmental level as determined by the student's admission, review, and dismissal committee.</p> <p>(b-1) The agency, in conjunction with appropriate interested persons, shall redevelop assessment instruments adopted or developed under Subsection (b) for administration to significantly cognitively disabled students in a manner consistent with federal law. An assessment instrument under this subsection may not require a teacher to prepare tasks or</p>
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	<p>(2) the name, position, and signature of each member participating in the meeting; and</p> <p>(3) an indication of whether the child's parents, the adult student, if applicable, and the administrator agreed or disagreed with the decisions of the ARD committee.</p> <p>Last Amended: March 22, 2017, 42 TexReg 1247</p> <p>§ 89.1070. Graduation Requirements. [Excerpt]</p> <p>...</p> <p>(b) A student entering Grade 9 in the 2014-2015 school year and thereafter who receives special education services may graduate and be awarded a regular high school diploma if the student meets one of the following conditions.</p> <p>(1) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-118, 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation under the Foundation High School Program specified in §74.12 of this title (relating to Foundation High School Program) applicable to students in general education as well as satisfactory performance as established in the TEC, Chapter 39, on the required state assessments, unless the student's admission, review, and dismissal (ARD) committee has determined that satisfactory performance on the required state assessments is not necessary for graduation.</p> <p>(2) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-118, 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation under the Foundation High School Program specified in §74.12 of this title through courses, one or more of which contain modified curriculum that is aligned to the standards applicable to students in general education, as well as satisfactory performance as established in the TEC, Chapter 39, on the required state assessments, unless the student's ARD committee has determined that satisfactory performance on the required state assessments is not necessary for graduation. The student must also successfully complete the student's individualized education program (IEP) and meet one of the following conditions.</p> <p>(A) Consistent with the IEP, the student has obtained full-time employment, based on the student's abilities and local employment opportunities, in addition to mastering sufficient self-help skills to enable the student to maintain the employment without direct and ongoing educational support of the local school district.</p> <p>(B) Consistent with the IEP, the student has demonstrated mastery of specific employability skills and self-help skills that do not require direct ongoing educational support of the local school</p>	<p>materials for a student who will be administered such an assessment instrument. Assessment instruments adopted or developed under this subsection shall be administered not later than the 2014-2015 school year.</p> <p>(c) The agency shall also adopt end-of-course assessment instruments for secondary-level courses in Algebra I, biology, English I, English II, and United States history. The Algebra I end-of-course assessment instrument must be administered with the aid of technology. The English I and English II end-of-course assessment instruments must each assess essential knowledge and skills in both reading and writing in the same assessment instrument and must provide a single score. A school district shall comply with State Board of Education rules regarding administration of the assessment instruments listed in this subsection. If a student is in a special education program under Subchapter A, Chapter 29, the student's admission, review, and dismissal committee shall determine whether any allowable modification is necessary in administering to the student an assessment instrument required under this subsection. The State Board of Education shall administer the assessment instruments. The State Board of Education shall adopt a schedule for the administration of end-of-course assessment instruments that complies with the requirements of Subsection (c-3).</p> <p>...</p> <p>Text of subsection effective on or before September 1, 2015; see note following section for effective date information; effective until September 1, 2017</p> <p>(l) The State Board of Education shall adopt rules for the administration of the assessment instruments adopted under Subsection (a) and, to the extent applicable, the assessment instruments adopted under Subsection (a-4) in Spanish to students in grades three, four, and five who are of limited English proficiency, as defined by Section 29.052, whose primary language is Spanish, and who are not otherwise exempt from the administration of an assessment instrument under Section 39.027(a)(1) or (2). Each student of limited English proficiency whose primary language is Spanish, other than a student to whom Subsection (b) applies, may be assessed using assessment instruments in Spanish under this subsection for up to three years or assessment instruments in English under Subsection (a) and, as applicable, Subsection (a-4). The language proficiency assessment committee established under Section 29.063 shall determine which students are administered assessment instruments in Spanish under this subsection.</p> <p>Text of subsection effective September 1, 2017; see note following section for effective date information</p> <p>(l) The State Board of Education shall adopt rules for the administration of the assessment instruments adopted under Subsection (a) in Spanish to students in grades three through five who are of limited English proficiency, as defined by Section 29.052, whose primary language is Spanish, and who are not otherwise exempt from the administration of an</p>
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	<p>district.</p> <p>(C) The student has access to services that are not within the legal responsibility of public education or employment or educational options for which the student has been prepared by the academic program.</p> <p>(D) The student no longer meets age eligibility requirements.</p> <p>(c) A student receiving special education services may earn an endorsement under §74.13 of this title (relating to Endorsements) if the student:</p> <p>(1) satisfactorily completes the requirements for graduation under the Foundation High School Program specified in §74.12 of this title as well as the additional credit requirements in mathematics, science, and elective courses as specified in §74.13(e) of this title with or without modified curriculum;</p> <p>(2) satisfactorily completes the courses required for the endorsement under §74.13(f) of this title without any modified curriculum; and</p> <p>(3) performs satisfactorily as established in the TEC, Chapter 39, on the required state assessments.</p> <p>(d) Notwithstanding subsection (c)(3) of this section, a student receiving special education services classified in Grade 11 or 12 during the 2014-2015, 2015-2016, or 2016-2017 school year who has taken each of the state assessments required by Chapter 101, Subchapter CC, of this title (relating to Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program) or Subchapter DD of this title (relating to Commissioner's Rules Concerning Substitute Assessments for Graduation) but failed to achieve satisfactory performance on no more than two of the assessments is eligible to receive an endorsement if the student has met the requirements in subsection (c)(1) and (2) of this section.</p> <p>(e) In order for a student receiving special education services to use a course to satisfy both a requirement under the Foundation High School Program specified in §74.12 of this title and a requirement for an endorsement under §74.13 of this title, the student must satisfactorily complete the course without any modified curriculum.</p> <p>(f) A student receiving special education services who entered Grade 9 before the 2014-2015 school year may graduate and be awarded a high school diploma under the Foundation High School Program as provided in §74.1021 of this title (relating to Transition to the Foundation High School Program), if the student's ARD committee determines that the student should take courses under that program and the student satisfies the requirements of that program. Subsections (c) and (d) of this section apply to a student transitioning to the Foundation High School Program under this subsection. As the TEC, §28.0258 and §39.025(a-2), modify the state assessment requirements applicable to students in general education, a student receiving special education services who is classified in Grade</p>	<p>assessment instrument under Section 39.027(a)(1) or (2). Each student of limited English proficiency whose primary language is Spanish, other than a student to whom Subsection (b) applies, may be assessed using assessment instruments in Spanish under this subsection for up to three years or assessment instruments in English under Subsection (a). The language proficiency assessment committee established under Section 29.063 shall determine which students are administered assessment instruments in Spanish under this subsection.</p> <p>...</p> <p>Text of subsection effective on or before September 1, 2015; see note following section for effective date information; effective until September 1, 2017</p> <p>(m) The commissioner by rule shall develop procedures under which the language proficiency assessment committee established under Section 29.063 shall determine which students are exempt from the administration of the assessment instruments under Section 39.027(a)(1) or (2). The rules adopted under this subsection shall ensure that the language proficiency assessment committee provides that the exempted students are administered the assessment instruments under Subsections (a) and (c) and, to the extent applicable, Subsections (a-4), (a-5), and (a-6) at the earliest practical date.</p> <p>Text of subsection effective September 1, 2017; see note following section for effective date information</p> <p>(m) The commissioner by rule shall develop procedures under which the language proficiency assessment committee established under Section 29.063 shall determine which students are exempt from the administration of the assessment instruments under Section 39.027(a)(1) or (2). The rules adopted under this subsection shall ensure that the language proficiency assessment committee provides that the exempted students are administered the assessment instruments under Subsections (a) and (c) at the earliest practical date.</p> <p>...</p> <p>Text of subsection effective on or before September 1, 2015; see note following section for effective date information; effective until September 1, 2017</p> <p>(n) This subsection applies only to a student who is determined to have dyslexia or a related disorder and who is an individual with a disability under 29 U.S.C. Section 705(20) and its subsequent amendments. The agency shall adopt or develop appropriate criterion-referenced assessment instruments designed to assess the ability of and to be administered to each student to whom this subsection applies for whom the assessment instruments adopted under Subsection (a) and, to the extent applicable, the assessment instruments adopted under Subsections (a-4), (a-5), and (a-6), even with allowable modifications, would not provide an appropriate measure of student achievement, as determined by the committee</p>
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	<p>11 or 12 during the 2014-2015, 2015-2016, or 2016-2017 school year who has taken each of the state assessments required by Chapter 101, Subchapter CC, of this title (relating to Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program) or Subchapter DD of this title (relating to Commissioner's Rules Concerning Substitute Assessments for Graduation) but failed to achieve satisfactory performance on no more than two of the assessments may graduate if the student has satisfied all other applicable graduation requirements.</p> <p>(g) A student receiving special education services who entered Grade 9 before the 2014-2015 school year may graduate and be awarded a regular high school diploma if the student meets one of the following conditions.</p> <p>(1) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-118, 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation (under the recommended or distinguished achievement high school programs in Chapter 74, Subchapter F, of this title (relating to Graduation Requirements, Beginning with School Year 2007-2008) or Chapter 74, Subchapter G, of this title (relating to Graduation Requirements, Beginning with School Year 2012-2013)), as applicable, including satisfactory performance as established in the TEC, Chapter 39, on the required state assessments.</p> <p>(2) Notwithstanding paragraph (1) of this subsection, as the TEC, §28.0258 and §39.025(a-2), modify the state assessment requirements applicable to students in general education, a student receiving special education services who is classified in Grade 11 or 12 during the 2014-2015, 2015-2016, or 2016-2017 school year may graduate under the recommended or distinguished achievement high school program, as applicable, if the student has taken each of the state assessments required by Chapter 101, Subchapter CC, of this title (relating to Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program) or Subchapter DD of this title (relating to Commissioner's Rules Concerning Substitute Assessments for Graduation) but failed to achieve satisfactory performance on no more than two of the assessments and has met all other applicable graduation requirements in paragraph (1) of this subsection.</p> <p>(3) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-118, 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation (under the minimum high school program in Chapter 74, Subchapter F or G, of this title), as applicable, including participation in required state assessments. The student's ARD committee will determine whether satisfactory performance on the required state assessments is necessary for graduation.</p>	<p>established by the board of trustees of the district to determine the placement of students with dyslexia or related disorders. The committee shall determine whether any allowable modification is necessary in administering to a student an assessment instrument required under this subsection. The assessment instruments required under this subsection shall be administered on the same schedule as the assessment instruments administered under Subsections (a), (a-4), (a-5), and (a-6), as applicable.</p> <p>Text of subsection effective September 1, 2017; see note following section for effective date information</p> <p>(n) This subsection applies only to a student who is determined to have dyslexia or a related disorder and who is an individual with a disability under 29 U.S.C. Section 705(20) and its subsequent amendments. The agency shall adopt or develop appropriate criterion-referenced assessment instruments designed to assess the ability of and to be administered to each student to whom this subsection applies for whom the assessment instruments adopted under Subsection (a), even with allowable modifications, would not provide an appropriate measure of student achievement, as determined by the committee established by the board of trustees of the district to determine the placement of students with dyslexia or related disorders. The committee shall determine whether any allowable modification is necessary in administering to a student an assessment instrument required under this subsection. The assessment instruments required under this subsection shall be administered on the same schedule as the assessment instruments administered under Subsection (a).</p> <p>...</p> <p>Last Amended: 84th Leg., Ch. 934 (H.B. 2349), Sec. 2, eff. June 18, 2015 84th Leg., Ch. 934 (H.B. 2349), Sec. 5(1), eff. June 18, 2015 84th Leg., Ch. 1006 (H.B. 743), Sec. 1, eff. June 19, 2015 84th Leg., Ch. 1094 (H.B. 2804), Sec. 13, eff. June 19, 2015</p>
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	<p>(4) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-118, 126-128, and 130 of this title through courses, one or more of which contain modified content that is aligned to the standards required under the minimum high school program in Chapter 74, Subchapter F or G, of this title, as applicable, as well as the satisfactorily completed credit requirements under the minimum high school program, including participation in required state assessments. The student's ARD committee will determine whether satisfactory performance on the required state assessments is necessary for graduation. The student graduating under this subsection must also successfully complete the student's IEP and meet one of the following conditions.</p> <p>(A) Consistent with the IEP, the student has obtained full-time employment, based on the student's abilities and local employment opportunities, in addition to mastering sufficient self-help skills to enable the student to maintain the employment without direct and ongoing educational support of the local school district.</p> <p>(B) Consistent with the IEP, the student has demonstrated mastery of specific employability skills and self-help skills that do not require direct ongoing educational support of the local school district.</p> <p>(C) The student has access to services that are not within the legal responsibility of public education or employment or educational options for which the student has been prepared by the academic program.</p> <p>(D) The student no longer meets age eligibility requirements.</p> <p>...</p> <p>(i) Students who participate in graduation ceremonies but who are not graduating under subsections (b)(2)(A), (B), or (C) or (g)(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 (h) of this section.</p> <p>(j) Employability and self-help skills referenced under subsections (b)(2) and (g)(4) of this section are those skills directly related to the preparation of students for employment, including general skills necessary to obtain or retain employment.</p> <p>(k) For students who receive a diploma according to subsections (b)(2)(A), (B), or (C) or (g)(4)(A), (B), or (C) of this section, the ARD committee must determine needed educational services upon the request of the student or parent to resume services, as long as the student meets the age eligibility requirements.</p> <p>...</p> <p>Last Amended: September 16, 2015, 40 TexReg 6107</p>	
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	<p>§ 89.1075. General Program Requirements and Local District Procedures. [Excerpt]</p> <p>...</p> <p>(e) Students with disabilities must have available an instructional day commensurate with that of students without disabilities. The ARD committee must determine the appropriate instructional setting and length of day for each student, and these must be specified in the student's IEP.</p> <p>...</p> <p>Last Amended: January 1, 2015, 39 TexReg 10446</p> <p>§ 89.1085. Referral for the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf Services. [Excerpt]</p> <p>...</p> <p>(c) When a student's ARD committee places the student at the TSBVI or the TSD, the student's resident school district shall comply with the following requirements.</p> <ol style="list-style-type: none"> (1) For each student, the resident school district shall list those services in the student's individualized education program (IEP) which the TSBVI or the TSD can appropriately provide. (2) The district may make an on-site visit to verify that the TSBVI or the TSD can and will offer the services listed in the individual student's IEP and to ensure that the school offers an appropriate educational program for the student. (3) For each student, the resident school district shall include in the student's IEP the criteria and estimated time lines for returning the student to the resident school district. <p>...</p> <p>Last Amended: November 11, 2007, 32 TexReg 8129</p> <p>§ 89.1090. Transportation of Students Placed in a Residential Setting, Including the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf.</p> <p>For each student placed in a residential setting by the student's admission, review, and dismissal (ARD) committee, including those students placed in the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf, the resident school district shall be responsible for transportation at the beginning and end of the term and for regularly scheduled school holidays when students are expected to leave the residential campus. The resident school district is not responsible for transportation costs for students placed in residential settings by their parents. Transportation costs shall not exceed state approved per diem and mileage rates unless excess costs can be justified and documented. Transportation shall be arranged using the most cost efficient means. When it is necessary for the safety of the student, as determined by the ARD committee, for an adult designated by the ARD committee to accompany the student, round-trip transportation for that adult shall also be provided. The resident school district and the residential</p>	
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	<p>facility shall coordinate to ensure that students are transported safely, including the periods of departure and arrival. Last Amended: November 11, 2007, 32 TexReg 8129</p> <p>§ 89.1096. Provision of Services for Students Placed by their Parents in Private Schools or Facilities. [Excerpt] ...</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>...</p> <p>(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.</p> <p>...</p> <p>Last Amended: November 11, 2007, 32 TexReg 8129</p> <p>§ 89.1201. Policy. [Excerpt] ...</p> <p>(d) Bilingual education and ESL programs shall be integral parts of the total school program. Such programs shall use instructional approaches designed to meet the special needs of English language learners. The basic curriculum content of the programs shall be based on the essential knowledge and</p>	
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	<p>skills required by the state. Last Amended: May 28, 2012, 37 TexReg 3822</p> <p>§ 89.1230. Eligible Students with Disabilities. [Excerpt]</p> <p>(a) School districts shall implement assessment procedures that differentiate between language proficiency and handicapping conditions in accordance with Subchapter AA of this chapter (relating to Commissioner's Rules Concerning Special Education Services) and shall establish placement procedures that ensure that placement in a bilingual education or English as a second language program is not refused solely because the student has a disability.</p> <p>...</p> <p>Last Amended: May 28, 2012, 37 TexReg 3822</p> <p>§ 101.5. Student Testing Requirements.</p> <p>Every student receiving instruction in the essential knowledge and skills shall take the appropriate criterion-referenced assessments, as required by the Texas Education Code (TEC), Chapter 39, Subchapter B.</p> <p>Last Amended: March 14, 2013, 38 TexReg 1676</p> <p>§ 101.1003. English Language Proficiency Assessments.</p> <p>(a) In Kindergarten-Grade 12, an English language learner (ELL), as defined by the Texas Education Code (TEC), Chapter 29, Subchapter B, as a student of limited English proficiency, shall be administered state-identified English language proficiency assessments annually in listening, speaking, reading, and writing to fulfill state requirements under the TEC, Chapter 39, Subchapter B, and federal requirements.</p> <p>(b) In rare cases, the admission, review, and dismissal (ARD) committee in conjunction with the language proficiency assessment committee (LPAC) may determine that it is not appropriate for an ELL who receives special education services to participate in an English language proficiency assessment required by subsection (a) of this section for reasons associated with the student's particular disability. The ARD committee shall document the decisions and justifications in the student's individualized education program, and the LPAC shall document the decisions and justifications in the student's permanent record file.</p> <p>(c) In the case of an ELL who receives special education services, the ARD committee in conjunction with the LPAC shall determine and document the need for allowable testing accommodations in accordance with administrative procedures established by the Texas Education Agency.</p> <p>Last Amended: December 22, 2011, 36 TexReg 8521</p> <p>§ 101.1005. Assessments of Achievement in Academic Content Areas and Courses. [Excerpt]</p> <p>(a) The language proficiency assessment committee (LPAC) shall</p>	
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<p>§ 300.321 IEP Team.</p> <p>(a) <i>General.</i> The public agency must ensure that the IEP Team for each child with a disability includes—</p> <ol style="list-style-type: none"> (1) The parents of the child; (2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment); (3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child; (4) A representative of the public agency who— <ol style="list-style-type: none"> (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; (ii) Is knowledgeable about the general education curriculum; and (iii) Is knowledgeable about the availability of resources 	<p>select the appropriate assessment option for each English language learner (ELL) in accordance with this subchapter. For each ELL who receives special education services, the student's admission, review, and dismissal (ARD) committee in conjunction with the student's LPAC shall select the appropriate assessments. The LPAC shall document the decisions and justifications in the student's permanent record file, and the ARD committee shall document the decisions and justifications in the student's individualized education program. Assessment decisions shall be made on an individual student basis and in accordance with administrative procedures established by the Texas Education Agency (TEA).</p> <p>...</p> <p>(e) The LPAC shall, in conjunction with the ARD committee if the ELL is receiving special education services under the TEC, Chapter 29, Subchapter A, determine and document any allowable testing accommodations for assessments under this section in accordance with administrative procedures established by the TEA.</p> <p>...</p> <p>Last Amended: March 27, 2013, 38 TexReg 1972</p> <p>§101.3013. Accommodations. [Excerpt]</p> <p>...</p> <p>(b) For a student receiving special education services, the admission, review, and dismissal (ARD) committee shall determine the allowable accommodations necessary for the student to take the assessments administered under the TEC, Chapter 39, Subchapter B, and shall document them in the student's individualized education program.</p> <p>...</p> <p>Last Amended: March 14, 2013, 38 TexReg 1679.</p> <p>§ 75.1023. Provisions for Individuals Who Are Members of Special Populations. [Excerpt]</p> <p>...</p> <p>(d) A student with a disability identified in accordance with provisions of Public Law 105-302 and the IDEA of 2004, 20 USC, §§1400-1491o, is an eligible participant in career and technical education when the requirements of this subsection are met.</p> <ol style="list-style-type: none"> (1) The ARD committee shall include a representative from career and technical education, preferably the teacher, when considering initial or continued placement of a student in a career and technical education program. An ARD committee member, including a member described in this subsection, is not required to attend an ARD committee meeting if the conditions of 34 Code of Federal Regulations (CFR), §300.321(e)(1), regarding attendance, or 34 CFR, §300.321(e)(2), regarding excusal, have been met. 	<p>§ 29.005. Individualized Education Program. [Excerpt]</p> <p>(a) Before a child is enrolled in a special education program of a school district, the district shall establish a committee composed of the persons required under 20 U.S.C. Section 1414(d) to develop the child's individualized education program. If a committee is required to include a regular education teacher, the regular education teacher included must, to the extent practicable, be a teacher who is responsible for implementing a portion of the child's individualized education program.</p> <p>...</p> <p>Last Amended: 84th Leg., R.S., Ch. 1192 (S.B. 1259), Sec. 2, eff. June 19, 2015</p> <p>§ 29.306. Familial and Advocate Involvement.</p> <p>A student who is deaf or hard of hearing must have an education in which the student's parents or legal guardians and advocates for the student's parents or legal guardians are involved in determining the</p>
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<p>of the public agency.</p> <p>(5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;</p> <p>(6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and</p> <p>(7) Whenever appropriate, the child with a disability.</p> <p>(b) <i>Transition services participants.</i></p> <p>(1) In accordance with paragraph (a)(7) of this section, the public agency must invite a child with a disability to attend the child's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under §300.320(b).</p> <p>(2) If the child does not attend the IEP Team meeting, the public agency must take other steps to ensure that the child's preferences and interests are considered.</p> <p>(3) To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of paragraph (b)(1) of this section, the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.</p> <p>(c) <i>Determination of knowledge and special expertise.</i> The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section must be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team.</p> <p>(d) <i>Designating a public agency representative.</i> A public agency may designate a public agency member of the IEP Team to also serve as the agency representative, if the criteria in paragraph (a)(4) of this section are satisfied.</p> <p>(e) <i>IEP Team attendance.</i></p> <p>(1) A member of the IEP Team described in paragraphs (a)(2) through (a)(5) of this section is not required to attend an IEP Team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.</p> <p>(2) A member of the IEP Team described in paragraph (e)(1) of this section may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if—</p> <p>(i) The parent, in writing, and the public agency consent to the excusal; and</p>	<p>...</p> <p>Last Amended: July 12, 2012, 37 TexReg 5132</p> <p>§ 89.1050. The Admission, Review, and Dismissal (ARD) Committee. [Excerpt]</p> <p>...</p> <p>(c) ARD committee membership.</p> <p>(1) ARD committees must include the following:</p> <p>(A) the parents of the student;</p> <p>(B) not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment) who must, to the extent practicable, be a teacher who is responsible for implementing a portion of the student's IEP;</p> <p>(C) not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student;</p> <p>(D) a representative of the school district who:</p> <p>(i) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities;</p> <p>(ii) is knowledgeable about the general education curriculum; and</p> <p>(iii) is knowledgeable about the availability of resources of the school district;</p> <p>(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;</p> <p>(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;</p> <p>(G) whenever appropriate, the student with a disability;</p> <p>(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;</p> <p>(I) a representative from career and technical education (CTE), preferably the teacher, when considering initial or continued placement of a student in CTE; and</p> <p>(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 an English language learner.</p>	<p>extent, content, and purpose of programs. Other individuals, including individuals who are deaf or hard of hearing, may be involved at the discretion of parents or legal guardians or the school district.</p> <p>Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995</p> <p>§ 30.021. Purpose of Texas School for the Blind and Visually Impaired. [Excerpt]</p> <p>...</p> <p>(b) The school district in which a student resides is responsible for assuring that a free appropriate public education is provided to each district student placed in the regular school year program of the school and that all legally required meetings for the purpose of developing and reviewing the student's individualized educational program are conducted. If the school disagrees with a district's individualized education program committee recommendation that a student be evaluated for placement, initially placed, or continued to be placed at the school, the district or the school may seek resolution according to a procedure established by the commissioner or through any due process hearing to which the district or school is entitled under the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.).</p> <p>...</p> <p>Last Amended: 80th Leg., R.S., Ch. 1312 (S.B. 1031), Sec. 6, eff. September 1, 2007</p>
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<p>(ii) The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.</p> <p>(f) <i>Initial IEP Team meeting for child under Part C.</i> In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP Team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.</p> <p>(Authority: 20 U.S.C. 1414(d)(1)(B)-(d)(1)(D)) Last Amended: 72 FR 61307, Oct. 30, 2007</p>	<p>(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, §300.18 and §300.156.</p> <p>(3) If the student is:</p> <p>(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;</p> <p>(B) a student with a suspected or documented auditory impairment, the ARD committee must include a teacher who is certified in the education of students with auditory impairments; or</p> <p>(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 with auditory impairments.</p> <p>(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.</p> <p>...</p> <p>Last Amended: March 22, 2017, 42 TexReg 1247</p> <p>§ 89.1052. Discretionary Placements in Juvenile Justice Alternative Education Programs.</p> <p>(a) This section applies only to the expulsion of a student with a disability under:</p> <p>(1) Texas Education Code (TEC), §37.007(b), (c), or (f); or</p> <p>(2) TEC, §37.007(d), as a result of conduct that contains the elements of any offense listed in TEC, §37.007(b)(2)(C), against any employee or volunteer in retaliation for or as a result of the person's employment or association with a school district.</p> <p>(b) In a county with a Juvenile Justice Alternative Education Program (JJAEP), a local school district must invite the administrator of the JJAEP or the administrator's designee to an admission, review, and dismissal (ARD) committee meeting convened to discuss the expulsion of a student with a disability under one of the provisions listed in subsection (a) of this section, relating to offenses for which a school district may expel a student. The school district must provide written notice of the meeting at least five school days before the meeting or a shorter timeframe agreed to by the student's parents. A copy of the student's current individualized education program (IEP) must be provided to the JJAEP representative with the notice. If the JJAEP representative is unable to attend the ARD committee meeting, the representative must be given the opportunity to participate in the meeting through alternative means, including conference telephone calls. The JJAEP representative may participate in the meeting to the extent that</p>	
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	<p>the meeting relates to the student's placement in the JJAEP and implementation of the student's current IEP in the JJAEP.</p> <p>(c) For a student with a disability who was expelled under one of the provisions listed in subsection (a) of this section and placed in the JJAEP, an ARD committee meeting must be convened to reconsider placement of the student in the JJAEP if the JJAEP provides written notice to the school district of specific concerns that the student's educational or behavioral needs cannot be met in the JJAEP. The school district must invite the JJAEP administrator or the administrator's designee to the meeting and must provide written notice of the meeting at least five school days before the meeting or a shorter timeframe agreed to by the student's parents. If the JJAEP representative is unable to attend the ARD committee meeting, the representative must be given the opportunity to participate in the meeting through alternative means, including conference telephone calls. The JJAEP representative may participate in the meeting to the extent that the meeting relates to the student's continued placement in the JJAEP.</p> <p>Last Amended: December 2, 2015, 40 TexReg 8642</p> <p>§ 89.1085. Referral for the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf Services. [Excerpt]</p> <p>...</p> <p>(b) In the event that a student is placed by his or her ARD committee at either the TSBVI or the TSD, the student's "resident school district," as defined in subsection (e) of this section, shall be responsible for assuring that a free appropriate public education (FAPE) is provided to the student at the TSBVI or the TSD, as applicable, in accordance with the Individuals with Disabilities Education Act (IDEA), 20 United States Code (USC), §§1400 et seq., 34 CFR, Part 300, state statutes, and rules of the State Board of Education (SBOE) and the commissioner of education. If representatives of the resident school district and representatives of the TSBVI or the TSD disagree, as members of a student's ARD committee, with respect to a recommendation by one or more members of the student's ARD committee that the student be evaluated for placement, initially placed, or continued to be placed at the TSBVI or TSD, as applicable, the representatives of the resident school district and the TSBVI or TSD, as applicable, may seek resolution through the mediation procedures adopted by the Texas Education Agency or through any due process hearing to which the resident school district or the TSBVI or the TSD are entitled under the IDEA, 20 USC, §§1400, et seq.</p> <p>...</p> <p>Last Amended: November 11, 2007, 32 TexReg 8129</p>	
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<p>§ 300.322 Parent participation.</p> <p>(a) <i>Public agency responsibility— general.</i> Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including—</p> <ol style="list-style-type: none"> (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place. <p>(b) <i>Information provided to parents.</i></p> <ol style="list-style-type: none"> (1) The notice required under paragraph (a)(1) of this section must— <ol style="list-style-type: none"> (i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and (ii) Inform the parents of the provisions in §300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and §300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act). (2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must— <ol style="list-style-type: none"> (i) Indicate— <ol style="list-style-type: none"> (A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with §300.320(b); and (B) That the agency will invite the student; and (ii) Identify any other agency that will be invited to send a representative. <p>(c) <i>Other methods to ensure parent participation.</i> If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with §300.328 (related to alternative means of meeting participation).</p> <p>(d) <i>Conducting an IEP Team meeting without a parent in</i></p>	<p>§ 89.1230. Eligible Students with Disabilities. [Excerpt]</p> <p>...</p> <p>(b) Admission, review, and dismissal committee members shall meet in conjunction with language proficiency assessment committee members to review the educational needs of each English language learner who qualifies for services in the special education program.</p> <p>Last Amended: May 28, 2012, 37 TexReg 3822</p> <p>§ 89.62. Support of Students Enrolled in the Texas School for the Blind and Visually Impaired and Texas School for the Deaf. [Excerpt]</p> <p>...</p> <p>(b) School districts shall provide, annually, in writing to each parent or legal guardian of an eligible student with visual or auditory impairments, the information specified in the Texas Education Code, §30.004(a)(1-3), before considering the student's placement for special education services.</p> <p>Last Amended: September 1, 1996, 21 TexReg 5690</p> <p>§ 89.1050. The Admission, Review, and Dismissal (ARD) Committee. [Excerpt]</p> <p>...</p> <p>(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 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 five school days before the meeting unless the parents agree to a shorter timeframe.</p> <p>(e) Upon receipt of a written request for an ARD committee meeting from a parent, the school district must:</p> <ol style="list-style-type: none"> (1) 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. <p>(f) If the parent is unable to speak English, 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 native language, unless it is clearly not feasible to do so. If the parent's 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 native</p>	<p>§ 26.0081. Right to Information Concerning Special Education and Education of Students with Learning Difficulties. [Excerpt]</p> <p>(a) The agency shall produce and provide to school districts sufficient copies of a comprehensive, easily understood document that explains the process by which an individualized education program is developed for a student in a special education program and the rights and responsibilities of a parent concerning the process. The document must include information a parent needs to effectively participate in an admission, review, and dismissal committee meeting for the parent's child.</p> <p>(b) The agency will ensure that each school district provides the document required under this section to the parent as provided by 20 U.S.C. Section 1415(b):</p> <ol style="list-style-type: none"> (1) as soon as practicable after a child is referred to determine the child's eligibility for admission into the district's special education program, but at least five school days before the date of the initial meeting of the admission, review, and dismissal committee; and (2) at any other time on reasonable request of the child's parent. <p>...</p> <p>Last Amended: 78th Leg., ch. 539, Sec. 1, 2, eff. Sept. 1, 2003</p> <p>§ 29.005. Individualized Education Program. [Excerpt]</p> <p>...</p> <p>(b-1) The written statement of the individualized education program must document the decisions of the committee with respect to issues discussed at each committee meeting. The written statement must include:</p> <ol style="list-style-type: none"> (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 administrator agreed or disagreed with the decisions of the committee. <p>(c) If the individualized education program is not developed by agreement, the written statement of the program required under 20 U.S.C. Section 1414(d) must include the basis of the disagreement. Each member of the committee who disagrees with the individualized education program developed by the committee is entitled to include a statement of disagreement in the written statement of the program.</p>
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<p><i>attendance.</i> A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as—</p> <ol style="list-style-type: none"> (1) Detailed records of telephone calls made or attempted and the results of those calls; (2) Copies of correspondence sent to the parents and any responses received; and (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits. <p>(e) <i>Use of interpreters or other action, as appropriate.</i> The public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.</p> <p>(f) <i>Parent copy of child's IEP.</i> The public agency must give the parent a copy of the child's IEP at no cost to the parent.</p> <p>(Authority: 20 U.S.C. 1414(d)(1)(B)(i)) Last Amended: 71 FR 46788, Aug. 14, 2006</p>	<p>language or other mode of communication so that the parent understands the content of the notice.</p> <p>(g) All members of the ARD committee must have the opportunity to participate in a collaborative manner in developing the IEP. 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.</p> <ol style="list-style-type: none"> (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. <p>...</p> <p>(i) If the student's parent is unable to speak English and the parent's 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 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 native language.</p> <ol style="list-style-type: none"> (1) For purposes of this subsection, a written copy of the student's IEP translated into Spanish or the parent's 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 	<p>(d) If the child's parent is unable to speak English, the district shall:</p> <ol style="list-style-type: none"> (1) provide the parent with a written or audiotaped copy of the child's individualized education program translated into Spanish if Spanish is the parent's native language; or (2) if the parent's native language is a language other than Spanish, make a good faith effort to provide the parent with a written or audiotaped copy of the child's individualized education program translated into the parent's native language. <p>...</p> <p>Last Amended: 84th Leg., R.S., Ch. 1192 (S.B. 1259), Sec. 2, eff. June 19, 2015</p> <p>§ 29.306. Familial and Advocate Involvement.</p> <p>A student who is deaf or hard of hearing must have an education in which the student's parents or legal guardians and advocates for the student's parents or legal guardians are involved in determining the extent, content, and purpose of programs. Other individuals, including individuals who are deaf or hard of hearing, may be involved at the discretion of parents or legal guardians or the school district.</p> <p>Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995</p> <p>§ 30.004. Information Concerning Programs.</p> <p>(a) Each school district shall provide each parent or other person having lawful control of a student with written information about:</p> <ol style="list-style-type: none"> (1) the availability of programs offered by state institutions for which the district's students may be eligible; (2) the eligibility requirements and admission conditions imposed by each of those state institutions; and (3) the rights of students in regard to admission to those state institutions and in regard to appeal of admission decisions. <p>(b) The State Board of Education shall adopt rules prescribing the form and content of information required by Subsection (a).</p> <p>Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995</p>
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<p>§ 300.323 When IEPs must be in effect.</p> <p>(a) <i>General.</i> At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in §300.320.</p> <p>(b) <i>IEP or IFSP for children aged three through five.</i></p> <p>(1) In the case of a child with a disability aged three through five (or, at the discretion of the SEA, a two-year-old child with a disability who will turn age three during the school year), the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is—</p> <p>(i) Consistent with State policy; and</p> <p>(ii) Agreed to by the agency and the child's parents.</p> <p>(2) In implementing the requirements of paragraph (b)(1) of this section, the public agency must—</p>	<p>IEP in English and not a partial translation or summary of the IEP in English.</p> <p>(2) For purposes of this subsection, an audio recording of the student's IEP translated into Spanish or the parent's 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.</p> <p>(3) If a parent's 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 native language or other mode of communication.</p> <p>(4) Under 34 CFR, §300.322(f), a school district must give a parent a written copy of the student's IEP at no cost to the parent. 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 native language in accordance with paragraph (1) of this subsection.</p> <p>...</p> <p>Last Amended: March 22, 2017, 42 TexReg 1247</p> <p>§ 89.1011. Full and Individual Initial Evaluation. [Excerpt]</p> <p>...</p> <p>(d) The admission, review, and dismissal (ARD) committee must make its decisions regarding a student's initial eligibility determination and, if appropriate, individualized education program (IEP) and placement within 30 calendar days from the date of the completion of the written full individual and initial evaluation report. If the 30th day falls during the summer and school is not in session, the student's ARD committee has until the first day of classes in the fall to finalize decisions concerning the student's initial eligibility determination, IEP, and placement, unless the full individual and initial evaluation indicates that the student will need extended school year services during that summer.</p> <p>(e) Notwithstanding the timelines in subsections (c) and (d) of this section, if the school district received the written consent for the evaluation from the student's parent at least 35 but less than 45 school days before the last instructional day of the school year, the written report of a full individual and initial evaluation of a student must be provided to the student's parent not later than June 30 of that year. The student's ARD committee must meet not later than the 15th school day of the following school year to consider the evaluation. If, however, the student was absent from school three or more days</p>	<p>§ 25.002. Requirements for Enrollment. [Excerpt]</p> <p>(a) If a parent or other person with legal control of a child under a court order enrolls the child in a public school, the parent or other person or the school district in which the child most recently attended school shall furnish to the school district:</p> <p>(1) the child's birth certificate or another document suitable as proof of the child's identity;</p> <p>(2) a copy of the child's records from the school the child most recently attended if the child has been previously enrolled in a school in this state or another state; and</p> <p>(3) a record showing that the child has the immunizations as required under Section 38.001, in the case of a child required under that section to be immunized, proof as required by that section showing that the child is not required to be immunized, or proof that the child is entitled to provisional admission under that section and under rules adopted under that section.</p> <p>(a-1) Information a school district furnishes under Subsections (a)(1) and (2) must be furnished by the district not later than the 10th working day after the date a request for the information is received by the district. Information a parent or other person with legal control of a child under a court order furnishes under Subsections (a)(1) and (2) must be furnished by the parent or other person not later than the 30th day after the date a child</p>
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<p>(i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and</p> <p>(ii) If the parents choose an IFSP, obtain written informed consent from the parents.</p> <p>(c) <i>Initial IEPs; provision of services.</i> Each public agency must ensure that—</p> <p>(1) A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and</p> <p>(2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.</p> <p>(d) <i>Accessibility of child's IEP to teachers and others.</i> Each public agency must ensure that—</p> <p>(1) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and</p> <p>(2) Each teacher and provider described in paragraph (d)(1) of this section is informed of—</p> <p>(i) His or her specific responsibilities related to implementing the child's IEP; and</p> <p>(ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.</p> <p>(e) <i>IEPs for children who transfer public agencies in the same State.</i> If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either—</p> <p>(1) Adopts the child's IEP from the previous public agency; or</p> <p>(2) Develops, adopts, and implements a new IEP that meets the applicable requirements in §§300.320 through 300.324.</p> <p>(f) <i>IEPs for children who transfer from another State.</i> If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency—</p> <p>(1) Conducts an evaluation pursuant to §§300.304 through 300.306 (if determined to be necessary by the new public agency); and</p> <p>(2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in</p>	<p>between the time that the school district received written consent and the last instructional day of the school year, the timeline in subsection (c)(1) of this section applies to the date the written report of the full individual and initial evaluation is required. If an initial evaluation completed not later than June 30 indicates that the student will need extended school year services during that summer, the ARD committee must meet as expeditiously as possible.</p> <p>...</p> <p>(g) For purposes of subsections (b), (c), and (e) of this section, school day does not include a day that falls after the last instructional day of the spring school term and before the first instructional day of the subsequent fall school term.</p> <p>...</p> <p>Last Amended: January 1, 2015, 39 TexReg 10446</p> <p>§ 89.1050. The Admission, Review, and Dismissal (ARD) Committee. [Excerpt]</p> <p>...</p> <p>(j) A school district must comply with the following for a student who is newly enrolled in the school district.</p> <p>(1) When a student transfers to a new school district within the state in the same school year and the parents verify that the student was receiving special education services in the previous school district or the previous school district verifies in writing or by telephone that the student was receiving special education services, the new school district must meet the requirements of 34 CFR, §300.323(e), regarding the provision of special education services. The timeline for completing the requirements outlined in 34 CFR, §300.323(e)(1) or (2), is 30 school days from the date the student is verified as being a student eligible for special education services.</p> <p>(2) When a student transfers from a school district in another state in the same school year and the parents verify that the student was receiving special education services in the previous school district or the previous school district verifies in writing or by telephone that the student was receiving special education services, the new school district must meet the requirements of 34 CFR, §300.323(f), regarding the provision of special education services. If the new school district determines that an evaluation is necessary, the evaluation is considered a full individual and initial evaluation and must be completed within the timelines established by §89.1011(c) and (e) of this title. The timeline for completing the requirements in 34 CFR, §300.323(f)(2), if appropriate, is 30 calendar days from the date of the completion of the evaluation report. If the school district determines that an evaluation is not necessary, the timeline for completing the requirements outlined in 34 CFR, §300.323(f)(2), is 30 school days from the date the student is verified as being a student eligible for special education services.</p>	<p>is enrolled in a public school. If a parent or other person with legal control of a child under a court order requests that a district transfer a child's student records, the district to which the request is made shall notify the parent or other person as soon as practicable that the parent or other person may request and receive an unofficial copy of the records for delivery in person to a school in another district.</p> <p>...</p> <p>Last Amended: 79th Leg., Ch. 164 (H.B. 25), Sec. 3, eff. May 27, 2005</p> <p>§ 29.004. Full Individual and Initial Evaluation. [Excerpt]</p> <p>...</p> <p>(a-1) If a school district receives written consent signed by a student's parent or legal guardian for a full individual and initial evaluation of a student at least 35 but less than 45 school days before the last instructional day of the school year, the evaluation must be completed and the written report of the evaluation must be provided to the parent or legal guardian not later than June 30 of that year. The student's admission, review, and dismissal committee shall meet not later than the 15th school day of the following school year to consider the evaluation. If a district receives written consent signed by a student's parent or legal guardian less than 35 school days before the last instructional day of the school year or if the district receives the written consent at least 35 but less than 45 school days before the last instructional day of the school year but the student is absent from school during that period on three or more days, Subsection (a)(1) applies to the date the written report of the full individual and initial evaluation is required.</p> <p>...</p> <p>Last Amended: 83rd Leg., R.S., Ch. 757 (S.B. 816), Sec. 1, eff. September 1, 2013</p> <p>§ 29.005. Individualized Education Program. [Excerpt]</p> <p>(a) Before a child is enrolled in a special education program of a school district, the district shall establish a committee composed of the persons required under 20 U.S.C. Section 1414(d) to develop the child's individualized education program. If a committee is required to include a regular education teacher, the regular education teacher included must, to the extent practicable, be a teacher who is responsible for implementing a portion of the child's individualized education program.</p> <p>...</p> <p>Last Amended: 84th Leg., R.S., Ch. 1192 (S.B. 1259), Sec. 2, eff. June 19, 2015</p>
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<p>§§300.320 through 300.324.</p> <p>(g) <i>Transmittal of records.</i> To facilitate the transition for a child described in paragraphs (e) and (f) of this section—</p> <p>(1) The new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, pursuant to 34 CFR 99.31(a)(2); and</p> <p>(2) The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency.</p> <p>(Authority: 20 U.S.C. 1414(d)(2)(A)–(C)) Last Amended: 71 FR 46789, Aug. 14, 2006</p>	<p>(3) In accordance with TEC, §25.002, and 34 CFR, §300.323(g), the school district in which the student was previously enrolled 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.</p> <p>...</p> <p>Last Amended: March 22, 2017, 42 TexReg 1247</p> <p>§ 89.1075. General Program Requirements and Local District Procedures. [Excerpt]</p> <p>...</p> <p>(c) Each school district must ensure that each teacher who provides instruction to a student with disabilities:</p> <p>(1) has access to relevant sections of the student's current IEP;</p> <p>(2) is informed of the teacher's specific responsibilities related to implementation of the IEP, such as goals and objectives, and of needed accommodations, modifications, and supports for the student; and</p> <p>(3) has an opportunity to request assistance regarding implementation of the student's IEP.</p> <p>...</p> <p>Last Amended: January 1, 2015, 39 TexReg 10446</p> <p>§ 89.1115. Memorandum of Understanding Concerning Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities. [Excerpt]</p> <p>....</p> <p>(d) Terms of MOU. The parties agree to the following terms:</p> <p>...</p> <p>(2) Regulatory and planning functions of the parties are coordinated as follows.</p> <p>(A) The parties will require LEAs and RFs to:</p> <p>(i) share, within a reasonable period of time and to the extent permitted by applicable statutes and regulations, all appropriate records and relevant information relating to a student with a disability. This subsection does not authorize the LEA to modify requirements for admission and enrollment into an LEA as set forth in TEC, Chapter 25. The records and information to be shared may include, but are not limited to:</p> <p>(I) birth certificate or other identifying document that proves the student's age;</p> <p>(II) medical history and medical records, including current immunization records and a history of infectious disease (e.g.,</p>	<p>§ 29.012. Residential Facilities. [EXCERPT]</p> <p>...</p> <p>(f) Except as provided by Subsection (g), a residential facility shall provide to a school district or open-enrollment charter school that provides educational services to a student placed in the facility any information retained by the facility relating to:</p> <p>(1) the student's school records, including records regarding:</p> <p>(A) special education eligibility or services;</p> <p>(B) behavioral intervention plans;</p> <p>(C) school-related disciplinary actions; and</p> <p>(D) other documents related to the student's educational needs;</p> <p>(2) any other behavioral history information regarding the student that is not confidential under another provision of law; and</p> <p>(3) the student's record of convictions or the student's probation, community supervision, or parole status, as provided to the facility by a law enforcement agency, local juvenile probation department or juvenile parole office, community supervision and corrections department, or parole office, if the information is needed to provide educational services to the student.</p> <p>(g) Subsection (f) does not apply to a:</p> <p>(1) juvenile pre-adjudication secure detention facility; or</p> <p>(2) juvenile post-adjudication secure correctional facility.</p> <p>...</p> <p>Last Amended: 85th Leg., R.S., Ch. 1026 (H.B. 1569), Sec. 1, eff. June 15, 2017 85th Leg., R.S., Ch. 764 (S.B. 2080), Sec. 1, June 12, 2017</p> <p>§ 37.022. Notice of Disciplinary Action. [Excerpt]</p> <p>(a) In this section:</p> <p>(1) "Disciplinary action" means a suspension, expulsion, placement in an alternative education program, or other limitation in enrollment eligibility of a student by a district or school.</p> <p>(2) "District or school" includes an independent school district, a home-rule school district, a campus or campus program charter holder, or an open-enrollment charter school.</p> <p>(b) If a district or school takes disciplinary action against a student and the student subsequently enrolls in another district or school before the expiration of the period of disciplinary action, the governing body of the district or school taking the disciplinary action shall provide to the district or school in which the student enrolls, at the same time other records of the student are provided, a copy of the order of disciplinary action.</p> <p>...</p>
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<p>Development of IEP</p> <p>§ 300.324 Development, review, and revision of IEP.</p> <p>(a) <i>Development of IEP—</i></p> <p>(1) <i>General.</i> In developing each child's IEP, the IEP Team must consider—</p> <ul style="list-style-type: none"> (i) The strengths of the child; (ii) The concerns of the parents for enhancing the education of their child; (iii) The results of the initial or most recent evaluation of the child; and 	<p>Hepatitis B, tuberculosis), including a description of any behavioral characteristics related to the transmission of such disease;</p> <ul style="list-style-type: none"> (III) social history; (IV) vision and hearing screening and evaluation; (V) evaluation reports, including psychological, educational, related service, assistive technology and vocational evaluations, and behavioral assessments; (VI) treatment plan of care or service; (VII) educational history (e.g., previous educational placement information); (VIII) any relevant court orders (e.g., orders related to placement in an RF, guardianship or conservatorship, or court-ordered services); (IX) information regarding a student's movement from an RF to a subsequent residence, including but not limited to the date the student left the RF and the location of the student's subsequent residence; and (X) name and phone number of contact persons representing the RF and the LEA; and <p>(ii) coordinate a student's individualized education program (IEP) and treatment plan of care or service. Coordination between an LEA and RF includes but is not limited to communication about responsibilities and timelines related to the development and implementation of the IEP and treatment plan, including permanency planning.</p> <p>...</p> <p>Last Amended: August 6, 2002, 27 TexReg 6851</p> <p>§ 89.1050. The Admission, Review, and Dismissal (ARD) Committee. [Excerpt]</p> <p>...</p> <p>(g) All members of the ARD committee must have the opportunity to participate in a collaborative manner in developing the IEP. 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.</p>	<p>Last Amended: 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(16), eff. September 1, 2005</p> <p>§ 29.001. Statewide Plan. [Excerpt]</p> <p>The agency shall 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 three and 21. The statewide design shall include the provision of services primarily through school districts and shared services arrangements, supplemented by regional education service centers. The agency shall also develop and implement a statewide plan with programmatic content that</p>
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<p>(iv) The academic, developmental, and functional needs of the child.</p> <p>(2) <i>Consideration of special factors.</i> The IEP Team must—</p> <p>(i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;</p> <p>(ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;</p> <p>(iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;</p> <p>(iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and</p> <p>(v) Consider whether the child needs assistive technology devices and services.</p> <p>(3) <i>Requirement with respect to regular education teacher.</i> A regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of—</p> <p>(i) Appropriate positive behavioral interventions and supports and other strategies for the child; and</p> <p>(ii) Supplementary aids and services, program modifications, and support for school personnel consistent with §300.320(a)(4).</p> <p>(4) <i>Agreement.</i></p> <p>(i) In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.</p> <p>(ii) If changes are made to the child's IEP in accordance with paragraph (a)(4)(i) of this section, the public agency must ensure that the child's IEP Team is informed of those changes.</p>	<p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>...</p> <p>Last Amended: March 22, 2017, 42 TexReg 1247</p> <p>§ 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 has a hearing impairment which severely impairs processing linguistic information through hearing, even with recommended amplification, and 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. Last Amended: September 1, 1996, 21 TexReg 7240</p> <p>§ 89.1096. Provision of Services for Students Placed by their Parents in Private Schools or Facilities. [Excerpt]</p> <p>...</p> <p>(b) When a student with a disability who has been placed by his or her parents directly in a private school or facility is referred to</p>	<p>includes procedures designed to:</p> <p>...</p> <p>(11) ensure that each district develops a process to be used by a teacher who instructs a student with a disability in a regular classroom setting:</p> <p>(A) to request a review of the student's individualized education program;</p> <p>(B) to provide input in the development of the student's individualized education program;</p> <p>(C) that provides for a timely district response to the teacher's request; and</p> <p>(D) that provides for notification to the student's parent or legal guardian of that response.</p> <p>Last Amended: 84th Leg., R.S., Ch. 1192 (S.B. 1259), Sec. 1, eff. June 19, 2015</p> <p>§ 29.056. Enrollment of Students in Program. [Excerpt]</p> <p>...</p> <p>(f) The district may not refuse to provide instruction in a language other than English to a student solely because the student has a disability.</p> <p>...</p> <p>Last Amended: 79th Leg., 3rd C.S., Ch. 5 (H.B. 1), Sec. 3.06, eff. May 31, 2006</p> <p>§ 29.301. Definitions. [Excerpt] In this subchapter:</p> <p>...</p> <p>(2) "American Sign Language" means a complete, visual, and manual language with its own grammar and syntax.</p> <p>(3) "English" includes writing, reading, speech, speech reading, cued speech, and any English-based manual-visual method of communication.</p> <p>(4) "Unique communication mode" or "appropriate language mode" includes English and American Sign Language.</p> <p>Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995</p> <p>§ 29.302. Findings.</p> <p>(a) The legislature finds that it is essential for the well-being and growth of students who are deaf or hard of hearing that educational programs recognize the unique nature of deafness and the hard-of-hearing condition and ensure that all students who are deaf or hard of hearing have appropriate, ongoing, and fully accessible educational opportunities. Students who are deaf or hard of hearing may choose to use a variety of language modes and languages, including oral and manual-visual language. Students who are deaf may choose to communicate through the language of the deaf community, American Sign Language, or through any of a number of</p>
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<p>(5) <i>Consolidation of IEP Team meetings.</i> To the extent possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.</p> <p>(6) <i>Amendments.</i> Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as provided in paragraph (a)(4) of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.</p> <p>(b) <i>Review and revision of IEPs—</i></p> <p>(1) <i>General.</i> Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team—</p> <p>(i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and</p> <p>(ii) Revises the IEP, as appropriate, to address—</p> <p>(A) Any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate;</p> <p>(B) The results of any reevaluation conducted under §300.303;</p> <p>(C) Information about the child provided to, or by, the parents, as described under §300.305(a)(2);</p> <p>(D) The child's anticipated needs; or</p> <p>(E) Other matters.</p> <p>(2) <i>Consideration of special factors.</i> In conducting a review of the child's IEP, the IEP Team must consider the special factors described in paragraph (a)(2) of this section.</p> <p>(3) <i>Requirement with respect to regular education teacher.</i> A regular education teacher of the child, as a member of the IEP Team, must, consistent with paragraph (a)(3) of this section, participate in the review and revision of the IEP of the child.</p> <p>(c) <i>Failure to meet transition objectives—</i></p> <p>(1) <i>Participating agency failure.</i> If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with §300.320(b), the public agency must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.</p> <p>(2) <i>Construction.</i> Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.</p>	<p>the local school district, the local district shall convene an admission, review, and dismissal (ARD) committee meeting 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, the district is not responsible for providing educational services to the student, except as provided in 34 CFR, §§300.130-300.144, or subsection (e) of this section, until such time as the parents choose to enroll the student in public school full time.</p> <p>...</p> <p>Last Amended: November 11, 2007, 32 TexReg 8129</p> <p>§ 89.1225. Testing and Classification of Students. [Excerpt]</p> <p>...</p> <p>(f) For entry into a bilingual education or English as a second language program, a student shall be identified as an English language learner using the following criteria.</p> <p>...</p> <p>(4) The admission review and dismissal (ARD) committee in conjunction with the language proficiency assessment committee shall determine an appropriate assessment instrument and designated level of performance for indicating limited English proficiency as required under subsection (d) of this section for students for whom those tests would be inappropriate as part of the individualized education program (IEP). The decision for entry into a bilingual education or English as a second language program shall be determined by the ARD committee in conjunction with the language proficiency assessment committee in accordance with §89.1220(g) of this title (relating to Language Proficiency Assessment Committee).</p> <p>...</p> <p>(h) For exit from a bilingual education or English as a second language program, a student may be classified as English proficient at the end of the school year in which a student would be able to participate equally in a general education, all-English instructional program. This determination shall be based upon all of the following:</p> <p>(1) TEA-approved tests that measure the extent to which the student has developed oral and written language proficiency and specific language skills in English;</p> <p>(2) satisfactory performance on the reading assessment instrument under the Texas Education Code (TEC), §39.023(a), or a TEA-approved English language arts assessment instrument administered in English, or a score at or above the 40th percentile on both the English reading and the English language arts sections of a TEA-approved norm-referenced standardized achievement instrument for a student who is enrolled in Grade 1 or 2; and</p> <p>(3) TEA-approved criterion-referenced written tests when available, or other TEA-approved tests when criterion-</p>	<p>English-based manual-visual languages. Students who are hard of hearing may choose to use spoken and written English, including speech reading or lip reading, together with amplification instruments, such as hearing aids, cochlear implants, or assistive listening systems, to communicate with the hearing population. Students who are deaf or hard of hearing may choose to use a combination of oral or manual-visual language systems, including cued speech, manual signed systems, and American Sign Language, or may rely exclusively on the oral-aural language of their choice. Students who are deaf or hard of hearing also may use other technologies to enhance language learning.</p> <p>(b) The legislature recognizes that students who are deaf or hard of hearing should have the opportunity to develop proficiency in English, including oral or manual-visual methods of communication, and American Sign Language.</p> <p>Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995</p> <p>§ 29.303. Unique Communication.</p> <p>Students who are deaf or hard of hearing must have an education in which their unique communication mode is respected, used, and developed to an appropriate level of proficiency.</p> <p>Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995</p> <p>§ 29.305. Language Mode Peers.</p> <p>If practicable and not in conflict with any admission, review, and dismissal committee recommendations, a student who is deaf or hard of hearing must have an education in the company of a sufficient number of peers using the same language mode and with whom the student can communicate directly. If practicable, the peers must be of the same or approximately the same age and ability.</p> <p>Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995</p> <p>§ 29.307. Role Models.</p> <p>A student who is deaf or hard of hearing shall be given the opportunity to be exposed to deaf or hard-of-hearing role models.</p> <p>Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995</p> <p>§ 29.312. Psychological Counseling Services.</p> <p>Appropriate psychological counseling services for a student who is deaf or hard of hearing shall be made available at the student's school site in the student's primary mode of communication. In the case of a student who is hard of hearing, appropriate auditory systems to enhance oral communication shall be used if required by the student's admission, review, and dismissal committee.</p> <p>Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995</p>
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<p>(d) <i>Children with disabilities in adult prisons—</i></p> <p>(1) <i>Requirements that do not apply.</i> The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:</p> <p>(i) The requirements contained in section 612(a)(16) of the Act and §300.320(a)(6) (relating to participation of children with disabilities in general assessments).</p> <p>(ii) The requirements in §300.320(b) (relating to transition planning and transition services) do not apply with respect to the children whose eligibility under Part B of the Act will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.</p> <p>(2) <i>Modifications of IEP or placement.</i></p> <p>(i) Subject to paragraph (d)(2)(ii) of this section, the IEP Team of a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the child's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.</p> <p>(ii) The requirements of §§300.320 (relating to IEPs), and 300.114 (relating to LRE), do not apply with respect to the modifications described in paragraph (d)(2)(i) of this section.</p> <p>(Authority: 20 U.S.C. 1412(a)(1), 1412(a)(12)(A)(i), 1414(d)(3), (4)(B), and (7); and 1414(e))</p> <p>Last Amended: 82 FR 29761, June 30, 2017</p>	<p>referenced tests are not available, and the results of a subjective teacher evaluation.</p> <p>...</p> <p>(k) The ARD committee in conjunction with the language proficiency assessment committee shall determine an appropriate assessment instrument and performance standard requirement for exit under subsection (h) of this section for students for whom those tests would be inappropriate as part of the IEP. The decision to exit a student who receives both special education and special language services from the bilingual education or English as a second language program is determined by the ARD committee in conjunction with the language proficiency assessment committee in accordance with applicable provisions of subsection (h) of this section.</p> <p>...</p> <p>Last Amended: May 28, 2012, 37 TexReg 3822</p>	<p>§ 29.314. Transition Into Regular Class.</p> <p>In addition to satisfying requirements of the admission, review, and dismissal committee and to satisfying requirements under state and federal law for vocational training, each school district shall develop and implement a transition plan for the transition of a student who is deaf or hard of hearing into a regular class program if the student is to be transferred from a special class or center or nonpublic, nonsectarian school into a regular class in a public school for any part of the school day. The transition plan must provide for activities:</p> <p>(1) to integrate the student into the regular education program and specify the nature of each activity and the time spent on the activity each day; and</p> <p>(2) to support the transition of the student from the special education program into the regular education program.</p> <p>Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995</p> <p>§ 30.002. Education for Children with Visual Impairments. [Excerpt]</p> <p>...</p> <p>(c) The comprehensive statewide plan for the education of children with visual impairments must:</p> <p>...</p> <p>(2) include the procedures, format, and content of the individualized education program for each child with a visual impairment;</p> <p>...</p> <p>(7) provide for effective interaction between the visually impaired child's classroom setting and the child's home environment, including providing for parental training and counseling either by school district staff or by representatives of other organizations directly involved in the development and implementation of the individualized education program for the child;</p> <p>...</p> <p>(f) In the development of the individualized education program for a functionally blind student, proficiency in braille reading and writing is presumed to be essential for the student's satisfactory educational progress. Each functionally blind student is entitled to braille reading and writing instruction that is sufficient to enable the student to communicate with the same level of proficiency as other students of comparable ability who are at the same grade level. Braille instruction may be used in combination with other special education services appropriate to the student's educational needs. The assessment of each functionally blind student for the purpose of developing the student's individualized education program must include documentation of the student's strengths and weaknesses in braille skills. Each person assisting in the development of a functionally blind student's individualized education program shall receive information describing the benefits of braille instruction. Each functionally blind student's individualized education program must specify the appropriate</p>
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		<p>learning medium based on the assessment report and ensure that instruction in braille will be provided by a teacher certified to teach students with visual impairments. For purposes of this subsection, the agency shall determine the criteria for a student to be classified as functionally blind.</p> <p>...</p> <p>Last Amended: 83rd Leg., R.S., Ch. 505 (S.B. 39), Sec. 1, eff. June 14, 2013 83rd Leg., R.S., Ch. 637 (H.B. 590), Sec. 1, eff. September 1, 2013</p> <p>§ 30.021. Purpose of Texas School for the Blind and Visually Impaired. [Excerpt]</p> <p>...</p> <p>(b) The school district in which a student resides is responsible for assuring that a free appropriate public education is provided to each district student placed in the regular school year program of the school and that all legally required meetings for the purpose of developing and reviewing the student's individualized educational program are conducted. If the school disagrees with a district's individualized education program committee recommendation that a student be evaluated for placement, initially placed, or continued to be placed at the school, the district or the school may seek resolution according to a procedure established by the commissioner or through any due process hearing to which the district or school is entitled under the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.).</p> <p>...</p> <p>Last Amended: 80th Leg., R.S., Ch. 1312 (S.B. 1031), Sec. 6, eff. September 1, 2007</p> <p>§ 30.083. Statewide Plan. [Excerpt]</p> <p>(a) The director of services shall develop and administer a comprehensive statewide plan for educational services for students who are deaf or hard of hearing, including continuing diagnosis and evaluation, counseling, and teaching. The plan shall be designed to accomplish the following objectives:</p> <p>...</p> <p>(6) recognizing the need for development of language and communications abilities in students who are deaf or hard of hearing, but also calling for the use of methods of communication that will meet the needs of each individual student, with each student assessed thoroughly so as to ascertain the student's potential for communications through a variety of means, including through oral or aural means, fingerspelling, or sign language.</p> <p>...</p> <p>Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995</p>
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§ 300.325 Private school placements by public agencies.

- (a) *Developing IEPs.*
 - (1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency must initiate and conduct a meeting to develop an IEP for the child in accordance with §§300.320 and 300.324.
 - (2) The agency must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.
- (b) *Reviewing and revising IEPs.*
 - (1) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.
 - (2) If the private school or facility initiates and conducts these meetings, the public agency must ensure that the parents and an agency representative—
 - (i) Are involved in any decision about the child's IEP; and
 - (ii) Agree to any proposed changes in the IEP before those changes are implemented.
- (c) *Responsibility.* Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA.

(Authority: 20 U.S.C. 1412(a)(10)(B))
 Last Amended: 71 FR 46790, Aug. 14, 2006

§ 300.326 [Reserved]

§ 300.327 Educational placements.

Consistent with §300.501(c), each public agency must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

(Authority: 20 U.S.C. 1414(e))
 Last Amended: 71 FR 46791, Aug. 14, 2006

§ 300.328 Alternative means of meeting participation.

When conducting IEP Team meetings and placement meetings pursuant to this subpart, and subpart E of this part, and carrying out administrative matters under section 615 of the Act (such as scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and a public agency may agree to use alternative means of meeting participation, such as video

§ 89.61. Contracting for Residential Educational Placements for Students with Disabilities. [Excerpt]

- (a) Residential placement. A school district may contract for residential placement of a student when the student's admission, review, and dismissal (ARD) committee determines that a residential placement is necessary in order for the student to receive a free appropriate public education (FAPE).
 - ...
 - (4) The school district has the following responsibilities when making a residential placement.
 - (A) Before the school district places a student with a disability in, or refers a student to, a residential facility, the district shall initiate and conduct a meeting of the student's ARD committee to develop an IEP for the student in accordance with 34 Code of Federal Regulations, §§300.320-300.325, state statutes, and commissioner of education rules.
 - ...

Last Amended: August 24, 2010, 35 TexReg 7212

§ 89.1050. The Admission, Review, and Dismissal (ARD) Committee. [Excerpt]

- ...
- (c) ARD committee membership.
 - (1) ARD committees must include the following:
 - (A) the parents of the student;
 - ...

Last Amended: March 22, 2017, 42 TexReg 1247

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conferences and conference calls.
 (Authority: 20 U.S.C. 1414(f))
 Last Amended: 71 FR 46791, Aug. 14, 2006

Individualized Education Program (IEP) Facilitation
[Not in Federal Regulations; See Texas Laws and Rules]

§ 89.1150. General Provisions. [Excerpt]

- ...
- (b) The possible options for resolving disputes include, but are not limited to:
 - (1) meetings of the student's admission, review, and dismissal committee, including individualized education program (IEP) facilitation if offered by the public education agency in accordance with §89.1196 of this title (relating to Individualized Education Program Facilitation);
 - ...
 - (4) requesting state IEP facilitation in accordance with §89.1197 of this title (relating to State Individualized Education Program Facilitation);
 - ...

Last Amended: January 1, 2015, 39 TexReg 10446

§ 89.1196. Individualized Education Program Facilitation.

- (a) For the purpose of this section and Texas Education Code, §29.019, individualized education program (IEP) facilitation refers to a method of alternative dispute resolution that involves the use of a trained facilitator to assist an admission, review, and dismissal (ARD) committee in developing an IEP for a student with a disability. The facilitator uses facilitation techniques to help the committee members communicate and collaborate effectively. While public education agencies are not required to offer IEP facilitation as an alternative dispute resolution method, the Texas Education Agency (TEA) encourages the use of IEP facilitation as described in this section.
- (b) A public education agency is not prohibited from incorporating elements of IEP facilitation into ARD committee meetings that are conducted without the assistance of a facilitator as described in this section. For example, a public education agency may provide training on communication skills, conflict management, or meeting effectiveness to individuals who participate in ARD committee meetings to enhance collaboration and efficiency in those meetings.
- (c) A public education agency that chooses to offer IEP facilitation under this section may determine whether to use independent contractors, employees, or other qualified individuals as facilitators. At a minimum, an individual who serves as a facilitator must:

§ 29.019. Individualized Education Program Facilitation.

- (a) The agency shall provide information to parents regarding individualized education program facilitation as an alternative dispute resolution method that may be used to avoid a potential dispute between a school district and a parent of a student with a disability. A district that chooses to use individualized education program facilitation shall provide information to parents regarding individualized education program facilitation. The information:
 - (1) must be included with other information provided to the parent of a student with a disability, although it may be provided as a separate document; and
 - (2) may be provided in a written or electronic format.
- (b) Information provided by the agency under this section must indicate that individualized education program facilitation is an alternative dispute resolution method that some districts may choose to provide.
- (c) If a school district chooses to offer individualized education program facilitation as an alternative dispute resolution method:
 - (1) the district may determine whether to use independent contractors, district employees, or other qualified individuals as facilitators;
 - (2) the information provided by the district under this section must include a description of any applicable procedures for requesting the facilitation; and
 - (3) the facilitation must be provided at no cost to a parent.
- (d) The use of any alternative dispute resolution method, including individualized education program facilitation, must be voluntary on the part of the participants, and the use or availability of any such method may not in any manner be used to deny or delay the right to pursue a special education complaint, mediation, or due process hearing in accordance with federal law.
- (e) Nothing in this section prohibits a school district from using individualized education program facilitation as the district's preferred method of conducting initial and annual admission, review, and dismissal committee meetings.
- (f) The commissioner shall adopt rules necessary to implement this section.

Last Amended: 83rd Leg., R.S., Ch. 539 (S.B. 542), Sec. 1, eff. June 14, 2013

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	<ul style="list-style-type: none"> (1) have demonstrated knowledge of federal and state requirements relating to the provision of special education and related services to students with disabilities; (2) have demonstrated knowledge of and experience with the ARD committee meeting process; (3) have completed 18 hours of training in IEP facilitation, consensus building, and/or conflict resolution; and (4) complete continuing education as determined by the public education agency. <p>(d) A public education agency that chooses to offer IEP facilitation under this section must ensure that:</p> <ul style="list-style-type: none"> (1) participation is voluntary on the part of the parties; (2) the facilitation is provided at no cost to parents; and (3) the process is not used to deny or delay the right to pursue a special education complaint, mediation, or a due process hearing in accordance with Part B of the Individuals with Disabilities Education Act (IDEA) and this division. <p>(e) A public education agency that chooses to offer IEP facilitation under this section must develop written policies and procedures that include:</p> <ul style="list-style-type: none"> (1) the procedures for requesting facilitation; (2) facilitator qualifications, including whether facilitators are independent contractors, employees, or other qualified individuals; (3) the process for assigning a facilitator; (4) the continuing education requirements for facilitators; and (5) a method for evaluating the effectiveness of the facilitation services and the individual facilitators. <p>(f) A public education agency that chooses to offer IEP facilitation under this section must provide parents with information about the process, including a description of the procedures for requesting IEP facilitation and information related to facilitator qualifications. This information must be included when a copy of the procedural safeguards notice under 34 Code of Federal Regulations (CFR), §300.504 is provided to parents, although this information may be provided as a separate document and may be provided in a written or electronic format.</p> <p>(g) A facilitator under this section must not be a member of the student's ARD committee, must not have any decision-making authority over the committee, and must remain impartial to the topics under discussion. The facilitator must assist with the overall organization and conduct of the ARD committee meeting by:</p> <ul style="list-style-type: none"> (1) assisting the committee in establishing an agenda and setting the time allotted for the meeting; (2) assisting the committee in establishing a set of guidelines for the meeting; (3) guiding the discussion and keeping the focus on developing a mutually agreed upon IEP for the student; 	<p>§ 29.020. Individualized Education Program Facilitation Project.</p> <p>(a) The agency shall develop rules in accordance with this section applicable to the administration of a state individualized education program facilitation project. The program shall include the provision of an independent individualized education program facilitator to facilitate an admission, review, and dismissal committee meeting with parties who are in a dispute about decisions relating to the provision of a free appropriate public education to a student with a disability. Facilitation implemented under the project must comply with rules developed under this subsection.</p> <p>(b) The rules must include:</p> <ul style="list-style-type: none"> (1) a definition of independent individualized education program facilitation; (2) forms and procedures for requesting, conducting, and evaluating independent individualized education program facilitation; (3) training, knowledge, experience, and performance requirements for independent facilitators; and (4) conditions required to be met in order for the agency to provide individualized education program facilitation at no cost to the parties. <p>(c) If the commissioner determines that adequate funding is available, the commissioner may authorize the use of federal funds to implement the individualized education program facilitation project in accordance with this section.</p> <p>(d) The commissioner shall adopt rules necessary to implement this section.</p> <p>Last Amended: 83rd Leg., R.S., Ch. 539 (S.B. 542), Sec. 1, eff. June 14, 2013</p>
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	<p>(4) ensuring that each committee member has an opportunity to participate;</p> <p>(5) helping to resolve disagreements that arise; and</p> <p>(6) helping to keep the ARD committee on task so that the meeting purposes can be accomplished within the time allotted for the meeting.</p> <p>(h) Promptly after being assigned to facilitate an ARD committee meeting, or within a timeline established under the public education agency's procedures, the facilitator must contact the parents and public education agency representative to clarify the issues, gather necessary information, and explain the IEP facilitation process.</p> <p>(i) A public education agency that chooses to offer IEP facilitation under this section must ensure that facilitators protect the confidentiality of personally identifiable information about the student and comply with the requirements in the Family Educational Rights and Privacy Act regulations, 34 CFR, Part 99, relating to the disclosure and redisclosure of personally identifiable information from a student's education record.</p> <p>(j) The TEA will develop information regarding IEP facilitation as an alternative dispute resolution method, and such information will be available upon request from the TEA and on the TEA website.</p> <p>Last Amended: January 1, 2015, 39 TexReg 10446</p> <p>§ 89.1197. State Individualized Education Program Facilitation.</p> <p>(a) In accordance with the Texas Education Code, §29.020, the Texas Education Agency (TEA) will establish a program that provides independent individualized education program (IEP) facilitators beginning with the 2014-2015 school year.</p> <p>(b) For the purpose of this section, IEP facilitation has the same general meaning as described in §89.1196(a) of this title (relating to Individualized Education Program Facilitation), except that state IEP facilitation is used when the admission, review, and dismissal (ARD) committee is in dispute about decisions relating to the provision of a free and appropriate public education to a student with a disability and the facilitator is an independent facilitator provided by the TEA.</p> <p>(c) A request for IEP facilitation under this section must be filed by completing a form developed by the TEA that is available upon request from the TEA and on the TEA website. The form must be filed with the TEA by one of the parties by mail, hand-delivery, or facsimile.</p> <p>(d) IEP facilitation under this section must be voluntary on the part of the parties and provided at no cost to the parties.</p> <p>(e) In order for the TEA to provide an independent facilitator, the following conditions must be met.</p> <p>(1) The required form must be completed and signed by both parties.</p> <p>(2) The dispute must relate to an ARD committee meeting in which mutual agreement about one or more of the required elements of the IEP was not reached and the</p>	
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	<p>parties have agreed to recess and reconvene the meeting in accordance with §89.1050(f) of this title (relating to The Admission, Review, and Dismissal Committee).</p> <p>(3) The request for IEP facilitation must have been filed within five calendar days of the ARD committee meeting that ended in disagreement, and a facilitator must be available on the date set for reconvening the meeting.</p> <p>(4) The dispute must not relate to a manifestation determination or determination of interim alternative educational setting under 34 Code of Federal Regulations (CFR), §300.530 or §300.531.</p> <p>(5) The same parties must not be concurrently involved in special education mediation under §89.1193 of this title (relating to Special Education Mediation).</p> <p>(6) The issues in dispute must not be the subject of a special education complaint under §89.1195 of this title (relating to Special Education Complaint Resolution) or a special education due process hearing under §89.1151 of this title (relating to Special Education Due Process Hearings) and §89.1165 of this title (relating to Request for Special Education Due Process Hearing).</p> <p>(7) The same parties must not have participated in IEP facilitation concerning the same student under this section within the same school year of the filing of the current request for IEP facilitation.</p> <p>(f) Within five business days of receipt of a request for an IEP facilitation under this section, the TEA will determine whether the conditions in subsections (c)-(e) of this section have been met and will notify the parties of its determination and the assignment of the independent facilitator, if applicable.</p> <p>(g) Notwithstanding subsections (b)-(e) of this section, if a special education due process hearing or complaint decision requires a public education agency to provide an independent facilitator to assist with an ARD committee meeting, the public education agency may request that the TEA assign an independent facilitator. Within five business days of receipt of a written request for IEP facilitation under this subsection, the TEA will notify the parties of its decision to assign or not assign an independent facilitator. If TEA declines the request to assign an independent facilitator, the public education agency must provide an independent facilitator at its own expense.</p> <p>(h) The TEA's decision not to provide an independent facilitator is final and not subject to review or appeal.</p> <p>(i) The independent facilitator assignment may be made based on a combination of factors, including, but not limited to, geographic location and availability. Once assigned, the independent facilitator must promptly contact the parties to clarify the issues, gather necessary information, and explain the IEP facilitation process.</p> <p>(j) The TEA will use a competitive solicitation method to seek independent facilitation services, and the contracts with independent facilitators will be developed and managed in</p>	
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	<p>accordance with the TEA's contracting practices and procedures.</p> <p>(k) At a minimum, an individual who serves as an independent facilitator under this section:</p> <ol style="list-style-type: none"> (1) must have demonstrated knowledge of federal and state requirements relating to the provision of special education and related services to students with disabilities; (2) must have demonstrated knowledge of and experience with the ARD committee meeting process; (3) must have completed 18 hours or more of training in IEP facilitation, consensus building, and/or conflict resolution as specified in the TEA's competitive solicitation; (4) must complete continuing education as determined by the TEA; (5) may not be an employee of the TEA or the public education agency that the student attends; and (6) may not have a personal or professional interest that conflicts with his or her impartiality. <p>(l) An individual is not an employee of the TEA solely because the individual is paid by the TEA to serve as an independent facilitator.</p> <p>(m) An independent facilitator must not be a member of the student's ARD committee, must not have any decision-making authority, and must remain impartial to the topics under discussion. The independent facilitator must assist with the overall organization and conduct of the ARD committee meeting by:</p> <ol style="list-style-type: none"> (1) assisting the committee in establishing an agenda and setting the time allotted for the meeting; (2) assisting the committee in establishing a set of guidelines for the meeting; (3) guiding the discussion and keeping the focus on developing a mutually agreed upon IEP for the student; (4) ensuring that each committee member has an opportunity to participate; (5) helping to resolve disagreements that arise; and (6) helping to keep the ARD committee on task so that the meeting purposes can be accomplished within the time allotted for the meeting. <p>(n) An independent facilitator must protect the confidentiality of personally identifiable information about the student and comply with the requirements in the Family Educational Rights and Privacy Act regulations, 34 CFR, Part 99, relating to the disclosure and redisclosure of personally identifiable information from a student's education record.</p> <p>(o) The TEA will develop surveys to evaluate the IEP facilitation program and the independent facilitators and will request that parties who participate in the program complete the surveys.</p> <p>Last Amended: January 1, 2015, 39 TexReg 10446</p>	
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Subpart E Procedural Safeguards Due Process Procedures for Parents and Children	Texas Administrative Code	Texas Education Code
<p>§ 300.500 Responsibility of SEA and other public agencies. Each SEA must ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of §§300.500 through 300.536. (Authority: 20 U.S.C. 1415(a)) Last Amended: 71 FR 46791, Aug. 14, 2006</p> <p>§ 300.501 Opportunity to examine records; parent participation in meetings.</p> <p>(a) <i>Opportunity to examine records.</i> The parents of a child with a disability must be afforded, in accordance with the procedures of §§300.613 through 300.621, an opportunity to inspect and review all education records with respect to—</p> <ol style="list-style-type: none"> (1) The identification, evaluation, and educational placement of the child; and (2) The provision of FAPE to the child. <p>(b) <i>Parent participation in meetings.</i></p> <ol style="list-style-type: none"> (1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to— <ol style="list-style-type: none"> (i) The identification, evaluation, and educational placement of the child; and (ii) The provision of FAPE to the child. (2) Each public agency must provide notice consistent with §300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section. (3) A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting. <p>(c) <i>Parent involvement in placement decisions.</i></p> <ol style="list-style-type: none"> (1) Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child. (2) In implementing the requirements of paragraph (c)(1) of this section, the public agency must use procedures consistent with the procedures described in §300.322(a) through (b)(1). 		

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<p>(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.</p> <p>(4) A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement.</p> <p>(Authority: 20 U.S.C. 1414(e), 1415(b)(1)) Last Amended: 71 FR 46791, Aug. 14, 2006</p> <p>§ 300.502 Independent educational evaluation.</p> <p>(a) <i>General.</i></p> <p>(1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.</p> <p>(2) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.</p> <p>(3) For the purposes of this subpart—</p> <p>(i) <i>Independent educational evaluation</i> means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and</p> <p>(ii) <i>Public expense</i> means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with §300.103.</p> <p>(b) <i>Parent right to evaluation at public expense.</i></p> <p>(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.</p> <p>(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either—</p> <p>(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or</p> <p>(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.</p>		
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<p>(3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.</p> <p>(4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.</p> <p>(5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.</p> <p>(c) <i>Parent-initiated evaluations.</i> If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation—</p> <p>(1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and</p> <p>(2) May be presented by any party as evidence at a hearing on a due process complaint under subpart E of this part regarding that child.</p> <p>(d) <i>Requests for evaluations by hearing officers.</i> If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.</p> <p>(e) <i>Agency criteria.</i></p> <p>(1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.</p> <p>(2) Except for the criteria described in paragraph (e)(1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.</p> <p>(Authority: 20 U.S.C. 1415(b)(1) and (d)(2)(A)) Last Amended: 71 FR 46791, Aug. 14, 2006</p> <p>§ 300.503 Prior notice by the public agency; content of notice.</p> <p>(a) <i>Notice.</i> Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency—</p>	<p>§ 89.1011. Full and Individual Initial Evaluation. [Excerpt]</p> <p>...</p> <p>(b) If a parent submits a written request to a school district's director of special education services or to a district administrative employee for a full individual and initial</p>	
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<p>(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or</p> <p>(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.</p> <p>(b) <i>Content of notice.</i> The notice required under paragraph (a) of this section must include—</p> <p>(1) A description of the action proposed or refused by the agency;</p> <p>(2) An explanation of why the agency proposes or refuses to take the action;</p> <p>(3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;</p> <p>(4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;</p> <p>(5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;</p> <p>(6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and</p> <p>(7) A description of other factors that are relevant to the agency's proposal or refusal.</p> <p>(c) <i>Notice in understandable language.</i></p> <p>(1) The notice required under paragraph (a) of this section must be—</p> <p>(i) Written in language understandable to the general public; and</p> <p>(ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.</p> <p>(2) If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure—</p> <p>(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;</p> <p>(ii) That the parent understands the content of the notice; and</p> <p>(iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met.</p> <p>(Authority: 20 U.S.C. 1415(b)(3) and (4), 1415(c)(1), 1414(b)(1))</p> <p>Last Amended: 71 FR 46792, Aug. 14, 2006</p>	<p>evaluation of a student, the school district must, not later than the 15th school day after the date the district receives the request:</p> <p>(1) provide the parent with prior written notice of its proposal to conduct an evaluation consistent with 34 Code of Federal Regulations (CFR), §300.503; a copy of the procedural safeguards notice required by 34 CFR, §300.504; and an opportunity to give written consent for the evaluation; or</p> <p>(2) provide the parent with prior written notice of its refusal to conduct an evaluation consistent with 34 CFR, §300.503, and a copy of the procedural safeguards notice required by 34 CFR, §300.504.</p> <p>...</p> <p>Last Amended: January 1, 2015, 39 TexReg 10446</p> <p>§ 89.1050. The Admission, Review, and Dismissal (ARD) Committee. [Excerpt]</p> <p>...</p> <p>(e) Upon receipt of a written request for an ARD committee meeting from a parent, the school district must:</p> <p>(1) schedule and convene a meeting in accordance with the procedures in subsection (d) of this section; or</p> <p>(2) within five school days, provide the parent with written notice explaining why the district refuses to convene a meeting.</p> <p>(f) If the parent is unable to speak English, 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 native language, unless it is clearly not feasible to do so. If the parent's 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 native language or other mode of communication so that the parent understands the content of the notice.</p> <p>...</p> <p>(h) 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 native language or other mode of communication. This notice must be provided to the parent at least five school days before the school district proposes or refuses the action unless the parent agrees to a shorter timeframe.</p> <p>...</p> <p>Last Amended: March 22, 2017, 42 TexReg 1247</p>	
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<p>§ 300.504 Procedural safeguards notice.</p> <p>(a) <i>General.</i> A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents—</p> <ol style="list-style-type: none"> (1) Upon initial referral or parent request for evaluation; (2) Upon receipt of the first State complaint under §§300.151 through 300.153 and upon receipt of the first due process complaint under §300.507 in a school year; (3) In accordance with the discipline procedures in §300.530(h); and (4) Upon request by a parent. <p>(b) <i>Internet Web site.</i> A public agency may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists.</p> <p>(c) <i>Contents.</i> The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under §300.148, §§300.151 through 300.153, §300.300, §§300.502 through 300.503, §§300.505 through 300.518, §§300.530 through 300.536 and §§300.610 through 300.625 relating to—</p> <ol style="list-style-type: none"> (1) Independent educational evaluations; (2) Prior written notice; (3) Parental consent; (4) Access to education records; (5) Opportunity to present and resolve complaints through the due process complaint and State complaint procedures, including— <ol style="list-style-type: none"> (i) The time period in which to file a complaint; (ii) The opportunity for the agency to resolve the complaint; and (iii) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures; (6) The availability of mediation; (7) The child's placement during the pendency of any due process complaint; (8) Procedures for students who are subject to placement in an interim alternative educational setting; (9) Requirements for unilateral placement by parents of children in private schools at public expense; (10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations; (11) State-level appeals (if applicable in the State); (12) Civil actions, including the time period in which to file those actions; and (13) Attorneys' fees. 	<p>§ 89.1011. Full and Individual Initial Evaluation. [Excerpt]</p> <p>...</p> <p>(b) If a parent submits a written request to a school district's director of special education services or to a district administrative employee for a full individual and initial evaluation of a student, the school district must, not later than the 15th school day after the date the district receives the request:</p> <ol style="list-style-type: none"> (1) provide the parent with prior written notice of its proposal to conduct an evaluation consistent with 34 Code of Federal Regulations (CFR), §300.503; a copy of the procedural safeguards notice required by 34 CFR, §300.504; and an opportunity to give written consent for the evaluation; or (2) provide the parent with prior written notice of its refusal to conduct an evaluation consistent with 34 CFR, §300.503, and a copy of the procedural safeguards notice required by 34 CFR, §300.504. <p>...</p> <p>Last Amended: January 1, 2015, 39 TexReg 10446</p>	<p>§ 29.004. Full Individual and Initial Evaluation. [Excerpt]</p> <p>...</p> <p>(c) If a parent or legal guardian makes a written request to a school district's director of special education services or to a district administrative employee for a full individual and initial evaluation of a student, the district shall, not later than the 15th school day after the date the district receives the request:</p> <ol style="list-style-type: none"> (1) provide an opportunity for the parent or legal guardian to give written consent for the evaluation; or (2) refuse to provide the evaluation and provide the parent or legal guardian with notice of procedural safeguards under 20 U.S.C. Section 1415(b). <p>Last Amended: 83rd Leg., R.S., Ch. 757 (S.B. 816), Sec. 1, eff. September 1, 2013</p>
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<p>(d) <i>Notice in understandable language.</i> The notice required under paragraph (a) of this section must meet the requirements of §300.503(c).</p> <p>(Authority: 20 U.S.C. 1415(d)) Last Amended: 72 FR 61307, Oct. 30, 2007</p> <p>§ 300.505 Electronic mail. A parent of a child with a disability may elect to receive notices required by §§300.503, 300.504, and 300.508 by an electronic mail communication, if the public agency makes that option available. (Authority: 20 U.S.C. 1415(n)) Last Amended: 71 FR 46792, Aug. 14, 2006</p> <p>§ 300.506 Mediation.</p> <p>(a) <i>General.</i> Each public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.</p> <p>(b) <i>Requirements.</i> The procedures must meet the following requirements:</p> <p>(1) The procedures must ensure that the mediation process—</p> <ul style="list-style-type: none"> (i) Is voluntary on the part of the parties; (ii) Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Act; and (iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques. <p>(2) A public agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party—</p> <ul style="list-style-type: none"> (i) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under section 671 or 672 of the Act; and (ii) Who would explain the benefits of, and encourage the use of, the mediation process to the parents. <p>(3) (i) The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. (ii) The SEA must select mediators on a random, rotational, or other impartial basis.</p> <p>(4) The State must bear the cost of the mediation process,</p>	<p>§ 89.1150. General Provisions. [Excerpt]</p> <p>...</p> <p>(b) The possible options for resolving disputes include, but are not limited to:</p> <p>...</p> <p>(5) requesting mediation through the TEA in accordance with 34 Code of Federal Regulations (CFR), §300.506;</p> <p>...</p> <p>Last Amended: January 1, 2015, 39 TexReg 10446</p> <p>§ 89.1193. Special Education Mediation.</p> <p>(a) In accordance with 34 Code of Federal Regulations (CFR), §300.506, the Texas Education Agency (TEA) has established a mediation process to provide parents and public education agencies with an opportunity to resolve disputes involving any matter arising under Part B of the Individuals with Disabilities Education Act (IDEA) or 34 CFR, §300.1 et seq. Mediation is available to resolve these disputes at any time.</p> <p>(b) The mediation procedures shall ensure that the process is:</p> <ul style="list-style-type: none"> (1) voluntary on the part of the parties; (2) not used to deny or delay a parent's right to a due process hearing or to deny any other rights afforded under Part B of the IDEA; and (3) conducted by a qualified and impartial mediator who is trained in effective mediation techniques and who is knowledgeable in laws and regulations relating to the provision of special education and related services. <p>(c) A request for mediation must be in writing and must be filed with the TEA by mail, hand-delivery, or facsimile. The TEA has developed a form that may be used by parties requesting mediation. The form is available on request from the TEA and is also available on the TEA website.</p> <p>(d) The TEA shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.</p>	
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<p>including the costs of meetings described in paragraph (b)(2) of this section.</p> <p>(5) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.</p> <p>(6) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that—</p> <p>(i) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and</p> <p>(ii) Is signed by both the parent and a representative of the agency who has the authority to bind such agency.</p> <p>(7) A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States.</p> <p>(8) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under this part.</p> <p>(c) <i>Impartiality of mediator.</i></p> <p>(1) An individual who serves as a mediator under this part—</p> <p>(i) May not be an employee of the SEA or the LEA that is involved in the education or care of the child; and</p> <p>(ii) Must not have a personal or professional interest that conflicts with the person's objectivity.</p> <p>(2) A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency described under §300.228 solely because he or she is paid by the agency to serve as a mediator.</p> <p>(Authority: 20 U.S.C. 1415(e)) Last Amended: 72 FR 61307, Oct. 30, 2007</p> <p>§ 300.507 Filing a due process complaint.</p> <p>(a) <i>General.</i></p> <p>(1) A parent or a public agency may file a due process complaint on any of the matters described in §300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).</p>	<p>(e) An individual who serves as a mediator:</p> <p>(1) may not be an employee of the TEA or the public education agency that is involved in the education or care of the child who is the subject of the mediation process;</p> <p>(2) shall not have a personal or professional conflict of interest, including relationships or contracts with schools or parents outside of mediations assigned by the TEA; and</p> <p>(3) is not an employee of the TEA solely because the individual is paid by the TEA to serve as a mediator.</p> <p>(f) The parties by agreement may select a mediator from the list maintained by the TEA. If the parties do not select a mediator by agreement, a mediator will be selected on a random basis by the TEA.</p> <p>(g) If a mediator is also a hearing officer under §89.1170 of this title (relating to Impartial Hearing Officer), that individual may not serve as a mediator if he or she is the hearing officer in a pending due process hearing involving the same student who is the subject of the mediation process or was the hearing officer in a previous due process hearing involving the student who is the subject of the mediation process.</p> <p>(h) The TEA shall bear the cost of the mediation process.</p> <p>(i) A mediation session shall be scheduled in a timely manner and held in a location that is convenient to the parties.</p> <p>(j) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that:</p> <p>(1) states that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and</p> <p>(2) is signed by both the parent and a representative of the public education agency who has the authority to bind the public education agency.</p> <p>(k) A written, signed mediation agreement under subsection (j) of this section is enforceable in any state or federal court of competent jurisdiction.</p> <p>(l) Discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings of any state or federal court.</p> <p>Last Amended: December 31, 2013, 38 TexReg 9552</p> <p>§ 89.1150. General Provisions. [Excerpt]</p> <p>...</p> <p>(b) The possible options for resolving disputes include, but are not limited to:</p> <p>...</p> <p>(7) requesting a due process hearing through the TEA in</p>	
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<p>(2) The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in §300.511(f) apply to the timeline in this section.</p> <p>(b) <i>Information for parents.</i> The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if—</p> <ol style="list-style-type: none"> (1) The parent requests the information; or (2) The parent or the agency files a due process complaint under this section. <p>(Authority: 20 U.S.C. 1415(b)(6)) Last Amended: 71 FR 46793, Aug. 14, 2006</p> <p>§ 300.508 Due process complaint.</p> <p>(a) <i>General.</i></p> <ol style="list-style-type: none"> (1) The public agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential). (2) The party filing a due process complaint must forward a copy of the due process complaint to the SEA. <p>(b) <i>Content of complaint.</i> The due process complaint required in paragraph (a)(1) of this section must include—</p> <ol style="list-style-type: none"> (1) The name of the child; (2) The address of the residence of the child; (3) The name of the school the child is attending; (4) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending; (5) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and (6) A proposed resolution of the problem to the extent known and available to the party at the time. <p>(c) <i>Notice required before a hearing on a due process complaint.</i> A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a</p>	<p>accordance with 34 CFR, §§300.507-300.514. Last Amended: January 1, 2015, 39 TexReg 10446</p> <p>§ 89.1151. Due Process Hearings. [Excerpt]</p> <p>(a) A parent or public education agency may initiate a due process hearing as provided in 34 Code of Federal Regulations (CFR), §300.507 and §300.508.</p> <p>...</p> <p>(c) A parent or public education agency must request a hearing within one year of the date the complainant knew or should have known about the alleged action that serves as the basis for the request.</p> <p>(d) The timeline described in subsection (c) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to:</p> <ol style="list-style-type: none"> (1) specific misrepresentations by the public education agency that it had resolved the problem forming the basis of the due process complaint; or (2) the public education agency's withholding of information from the parent that was required by 34 CFR, §300.1, et seq. to be provided to the parent. <p>Last Amended: December 31, 2013, 38 TexReg 9552</p> <p>§ 89.1165. Request for Hearing. [Excerpt]</p> <p>(a) A request for a due process hearing (due process complaint) must be in writing and must be filed with the Texas Education Agency (TEA). The request may be filed by mail, hand-delivery, or facsimile.</p> <p>(b) The party filing a request for a hearing must forward a copy of the request to the non-filing party at the same time that the request is filed with the TEA. The timelines applicable to hearings shall commence the calendar day after the non-filing party receives the request. Unless rebutted, it will be presumed that the non-filing party received the request on the date it is sent to the parties by the TEA.</p> <p>(c) The request for a hearing must include:</p> <ol style="list-style-type: none"> (1) the name of the child; (2) the address of the residence of the child; (3) the name of the school the child is attending; (4) in the case of a homeless child or youth (within the meaning of §725(2) of the McKinney-Vento Homeless Assistance Act (42 United States Code §11434a(2)), available contact information for the child, and the name of the school the child is attending; (5) a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and (6) a proposed resolution of the problem to the extent known and available to the party at the time. 	
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<p>due process complaint that meets the requirements of paragraph (b) of this section.</p> <p>(d) <i>Sufficiency of complaint.</i></p> <p>(1) The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (b) of this section.</p> <p>(2) Within five days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of paragraph (b) of this section, and must immediately notify the parties in writing of that determination.</p> <p>(3) A party may amend its due process complaint only if—</p> <p>(i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to §300.510; or</p> <p>(ii) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.</p> <p>(4) If a party files an amended due process complaint, the timelines for the resolution meeting in §300.510(a) and the time period to resolve in §300.510(b) begin again with the filing of the amended due process complaint.</p> <p>(e) <i>LEA response to a due process complaint.</i></p> <p>(1) If the LEA has not sent a prior written notice under §300.503 to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within 10 days of receiving the due process complaint, send to the parent a response that includes—</p> <p>(i) An explanation of why the agency proposed or refused to take the action raised in the due process complaint;</p> <p>(ii) A description of other options that the IEP Team considered and the reasons why those options were rejected;</p> <p>(iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and</p> <p>(iv) A description of the other factors that are relevant to the agency's proposed or refused action.</p> <p>(2) A response by an LEA under paragraph (e)(1) of this section shall not be construed to preclude the LEA from asserting that the parent's due process complaint was insufficient, where appropriate.</p> <p>(f) <i>Other party response to a due process complaint.</i> Except as</p>	<p>(d) A party may not have a hearing until the party files a request for a hearing that meets the requirements of subsection (c) of this section.</p> <p>...</p> <p>Last Amended: December 31, 2013, 38 TexReg 9552</p>	
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<p>provided in paragraph (e) of this section, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.</p> <p>(Authority: 20 U.S.C. 1415(b)(7), 1415(c)(2)) Last Amended: 71 FR 46793, Aug. 14, 2006</p> <p>§ 300.509 Model forms.</p> <p>(a) Each SEA must develop model forms to assist parents and public agencies in filing a due process complaint in accordance with §§300.507(a) and 300.508(a) through (c) and to assist parents and other parties in filing a State complaint under §§300.151 through 300.153. However, the SEA or LEA may not require the use of the model forms.</p> <p>(b) Parents, public agencies, and other parties may use the appropriate model form described in paragraph (a) of this section, or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in §300.508(b) for filing a due process complaint, or the requirements in §300.153(b) for filing a State complaint.</p> <p>(Authority: 20 U.S.C. 1415(b)(8)) Last Amended: 71 FR 46794, Aug. 14, 2006</p> <p>§ 300.510 Resolution process.</p> <p>(a) <i>Resolution meeting.</i></p> <p>(1) Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under §300.511, the LEA must convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that—</p> <p>(i) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and</p> <p>(ii) May not include an attorney of the LEA unless the parent is accompanied by an attorney.</p> <p>(2) The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.</p> <p>(3) The meeting described in paragraph (a)(1) and (2) of this section need not be held if—</p> <p>(i) The parent and the LEA agree in writing to waive the meeting; or</p> <p>(ii) The parent and the LEA agree to use the mediation process described in §300.506.</p> <p>(4) The parent and the LEA determine the relevant members</p>	<p>§ 89.1165. Request for Hearing. [Excerpt]</p> <p>...</p> <p>(e) The TEA has developed a model form that may be used by parents and public education agencies to request a hearing. The form is available on request from the TEA and on the TEA website.</p> <p>Last Amended: December 31, 2013, 38 TexReg 9552</p> <p>§ 89.1183. Resolution Process.</p> <p>(a) Within 15 calendar days of receiving notice of the parent's request for a due process hearing, the public education agency shall convene a resolution meeting with the parent and the relevant members of the admission, review, and dismissal committee who have specific knowledge of the facts identified in the request. The resolution meeting:</p> <p>(1) must include a representative of the public education agency who has decision-making authority on behalf of the public education agency; and</p> <p>(2) may not include an attorney of the public education agency unless the parent is accompanied by an attorney.</p> <p>(b) The purpose of the resolution meeting is for the parent of the child to discuss the hearing issues and the facts that form the basis of the request for a hearing so that the public education agency has the opportunity to resolve the dispute.</p> <p>(c) The resolution meeting described in subsections (a) and (b) of this section need not be held if:</p> <p>(1) the parent and the public education agency agree in writing to waive the meeting; or</p> <p>(2) the parent and the public education agency agree to use the mediation process described in §89.1193 of this title (relating to Special Education Mediation).</p>	
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<p>of the IEP Team to attend the meeting.</p> <p>(b) <i>Resolution period.</i></p> <p>(1) If the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.</p> <p>(2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under §300.515 begins at the expiration of this 30-day period.</p> <p>(3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.</p> <p>(4) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in §300.322(d)), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.</p> <p>(5) If the LEA fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.</p> <p>(c) <i>Adjustments to 30-day resolution period.</i> The 45-day timeline for the due process hearing in §300.515(a) starts the day after one of the following events:</p> <p>(1) Both parties agree in writing to waive the resolution meeting;</p> <p>(2) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible;</p> <p>(3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process.</p> <p>(d) <i>Written settlement agreement.</i> If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is—</p> <p>(1) Signed by both the parent and a representative of the agency who has the authority to bind the agency; and</p> <p>(2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the SEA, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements, pursuant to §300.537.</p> <p>(e) <i>Agreement review period.</i> If the parties execute an agreement</p>	<p>(d) The parent and the public education agency determine the relevant members of the admission, review, and dismissal committee to attend the resolution meeting.</p> <p>(e) The parties may enter into a confidentiality agreement as part of their resolution agreement. There is nothing in this division, however, that requires the participants in a resolution meeting to keep the discussion confidential or make a confidentiality agreement a condition of a parent's participation in the resolution meeting.</p> <p>(f) If the public education agency has not resolved the hearing issues to the satisfaction of the parent within 30 calendar days of the receipt of the request for a hearing, the hearing may occur.</p> <p>(g) Except as provided in subsection (k) of this section, the timeline for issuing a final decision begins at the expiration of this 30-day resolution period.</p> <p>(h) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding subsections (f) and (g) of this section, the failure of the parent filing a request for a hearing to participate in the resolution meeting delays the timelines for the resolution process and the hearing until the meeting is held.</p> <p>(i) If the public education agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented in accordance with the procedures in 34 Code of Federal Regulations, §300.322(d)), the public education agency may at the conclusion of the 30-day resolution period, request that a hearing officer dismiss the parent's request for a hearing.</p> <p>(j) If the public education agency fails to hold the resolution meeting within 15 calendar days of receiving the parent's request for a hearing or fails to participate in the resolution meeting, the parent may seek the intervention of the hearing officer to begin the hearing timeline.</p> <p>(k) Notwithstanding subsections (f) and (g) of this section, the timeline for issuing a final decision starts the calendar day after one of the following events:</p> <p>(1) both parties agree in writing to waive the resolution meeting;</p> <p>(2) after either the mediation or resolution meeting starts but before the end of the 30-day resolution period, the parties agree in writing that no agreement is possible; or</p> <p>(3) if both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later the parent or public education agency withdraws from the mediation process.</p> <p>(l) If a resolution to the dispute is reached at the resolution meeting, the parties shall execute a legally binding agreement that is:</p> <p>(1) signed by both the parent and a representative of the public education agency who has the authority to bind the public education agency; and</p>	
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<p>pursuant to paragraph (d) of this section, a party may void the agreement within 3 business days of the agreement's execution.</p> <p>(Authority: 20 U.S.C. 1415(f)(1)(B)) Last Amended: 72 FR 61307, Oct. 30, 2007</p> <p>§ 300.511 Impartial due process hearing.</p> <p>(a) <i>General.</i> Whenever a due process complaint is received under §300.507 or §300.532, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§300.507, 300.508, and 300.510.</p> <p>(b) <i>Agency responsible for conducting the due process hearing.</i> The hearing described in paragraph (a) of this section must be conducted by the SEA or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the SEA.</p> <p>(c) <i>Impartial hearing officer.</i></p> <p>(1) At a minimum, a hearing officer—</p> <p>(i) Must not be—</p> <p>(A) An employee of the SEA or the LEA that is involved in the education or care of the child; or</p> <p>(B) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;</p> <p>(ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;</p> <p>(iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and</p> <p>(iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.</p> <p>(2) A person who otherwise qualifies to conduct a hearing under paragraph (c)(1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.</p> <p>(3) Each public agency must keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.</p> <p>(d) <i>Subject matter of due process hearings.</i> The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under §300.508(b), unless the other party agrees otherwise.</p> <p>(e) <i>Timeline for requesting a hearing.</i> A parent or agency must</p>	<p>(2) enforceable in any state or federal court of competent jurisdiction.</p> <p>(m) If the parties execute an agreement pursuant to subsection (l) of this section, a party may void the agreement within three business days of the agreement's execution.</p> <p>Last Amended: December 31, 2013, 38 TexReg 9552</p> <p>§ 89.1151. Due Process Hearings. [Excerpt]</p> <p>...</p> <p>(b) The Texas Education Agency shall implement a one-tier system of hearings. The proceedings in hearings shall be governed by the provisions of 34 CFR, §§300.507-300.515 and 300.532, if applicable, and this division.</p> <p>(c) A parent or public education agency must request a hearing within one year of the date the complainant knew or should have known about the alleged action that serves as the basis for the request</p> <p>(d) The timeline described in subsection (c) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to:</p> <p>(1) specific misrepresentations by the public education agency that it had resolved the problem forming the basis of the due process complaint; or</p> <p>(2) the public education agency's withholding of information from the parent that was required by 34 CFR, §300.1, et seq. to be provided to the parent.</p> <p>Last Amended: December 31, 2013, 38 TexReg 9552</p> <p>§ 89.1170. Impartial Hearing Officer.</p> <p>(a) The Texas Education Agency (TEA) will maintain a pool of impartial hearing officers to conduct due process hearings. The TEA will assign cases to hearing officers who are private practice attorneys based on an alphabetical rotation. The TEA will assign cases to hearing officers who are employed by the State Office of Administrative Hearings (SOAH) in accordance with the procedures specified in the interagency contract between the TEA and SOAH. If, however, a request for a hearing relates to the same student who was involved in another hearing that was filed within the last 12 months, the TEA will assign the recently filed hearing request to the same hearing officer who presided over the previous hearing. In addition, the same hearing officer may be assigned to hearings involving siblings that are filed within 12 months of each other.</p> <p>(b) If a hearing officer is also a mediator under §89.1193 of this title (relating to Special Education Mediation), that individual will not be assigned as hearing officer if he or she is the mediator in a pending mediation involving the same student who is the subject of the hearing or was the mediator in a previous mediation involving the student who is the subject of the hearing.</p>	<p>§ 29.0163. Protection of the Rights of Military Families with Children with Disabilities.</p> <p>(a) In this section, "servicemember" means a member of:</p> <p>(1) the armed forces;</p> <p>(2) the Commissioned Corps of the National Oceanic and Atmospheric Administration; or</p> <p>(3) the Commissioned Corps of the United States Public Health Service.</p> <p>(b) The agency must include in the notice of procedural safeguards that the statute of limitations for the parent of a student to request an impartial due process hearing under 20 U.S.C. Section 1415(b) may be tolled if the parent is an active-duty servicemember and 50 U.S.C. Section 3936 applies to the parent.</p> <p>(c) The commissioner shall adopt rules to implement this section.</p> <p>Last Amended: 85th Leg., R.S., Ch. 1089 (H.B. 3632), Sec. 1, eff. June 15, 2017</p>
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<p>request an impartial hearing on their due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that State law.</p> <p>(f) <i>Exceptions to the timeline.</i> The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to—</p> <ol style="list-style-type: none"> (1) Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or (2) The LEA's withholding of information from the parent that was required under this part to be provided to the parent. <p>(Authority: 20 U.S.C. 1415(f)(1)(A), 1415(f)(3)(A)–(D)) Last Amended: 71 FR 46794, Aug. 14, 2006</p>	<ol style="list-style-type: none"> (c) A hearing officer must possess the knowledge and abilities described in 34 Code of Federal Regulations, §300.511(c), and must not be: <ol style="list-style-type: none"> (1) an employee of the TEA or the public agency that is involved in the education or care of the child who is the subject of the hearing; or (2) a person having a personal or professional interest that conflicts with the person's objectivity in the hearing. (d) A hearing officer is not an employee of the TEA solely because the individual is paid by the TEA to serve as a hearing officer. (e) A hearing officer has the authority to administer oaths; call and examine witnesses; rule on motions, including discovery and dispositive motions; determine admissibility of evidence and amendments to pleadings; maintain decorum; schedule and recess the proceedings from day to day; and make any other orders as justice requires, including the application of sanctions as necessary to maintain an orderly hearing process. (f) If a hearing officer is removed, dies, becomes disabled, or withdraws from a hearing before the completion of duties, the TEA will designate a substitute hearing officer to complete the performance of duties without the necessity of repeating any previous proceedings. (g) A party to a hearing who has grounds to believe that the assigned hearing officer cannot afford the party a fair and impartial hearing due to bias, prejudice, or a conflict of interest may file a written request with the assigned hearing officer asking that the hearing officer recuse himself or herself from presiding over the hearing. Any such written request must state the grounds for the request and the facts upon which the request is based. Upon receipt of a request, the assigned hearing officer must review the request and determine the sufficiency of the grounds stated in the request. The hearing officer then must prepare a written order concerning the request and serve the order on the parties to the hearing. If the hearing officer finds that the grounds for recusal are insufficient, the TEA will assign a second hearing officer to review the request. If the second hearing officer also determines that the grounds for recusal are insufficient, the assigned hearing officer will continue to preside over the hearing. If either the assigned hearing officer or the second hearing officer finds that the grounds for recusal are sufficient, the TEA will assign another hearing officer to preside over the remainder of the proceedings in accordance with the procedures in subsection (a) of this section. <p>Last Amended: December 2, 2015, 40 TexReg 8642</p> <p>§ 89.1180. Prehearing Procedures. [Excerpt]</p> <ol style="list-style-type: none"> (a) Promptly upon being assigned to a hearing, the hearing officer will forward to the parties a scheduling order which sets the time, date, and location of the hearing and contains the timelines for the following actions, as applicable: 	
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	<ul style="list-style-type: none"> (1) Response to Complaint (34 Code of Federal Regulations (CFR), §300.508(f)); (2) Resolution Meeting (34 CFR, §300.510(a)); (3) Contesting Sufficiency of the Complaint (34 CFR, §300.508(d)); (4) Resolution Period (34 CFR, §300.510(b)); (5) Five-Business Day Disclosure (34 CFR, §300.512 (a)(3)); and (6) the date by which the final decision of the hearing officer shall be issued (34 CFR, §300.515 and §300.532(c)(2)). <p>(b) The hearing officer shall schedule a prehearing conference to be held at a time reasonably convenient to the parties to the hearing. The prehearing conference shall be held by telephone unless the hearing officer determines that circumstances require an in-person conference.</p> <p>(c) The prehearing shall be recorded and transcribed by a reporter, who shall promptly prepare a transcript of the prehearing conference for the hearing officer with copies to each of the parties.</p> <p>(d) The purpose of the prehearing conference shall be to consider any of the following:</p> <ul style="list-style-type: none"> (1) specifying issues as set forth in the due process complaint; (2) admitting certain assertions of fact or stipulations; (3) establishing any limitations on the number of witnesses and the time allotted for presenting each party's case; and/or (4) discussing other matters which may aid in simplifying the proceeding or disposing of matters in controversy, including settling matters in dispute. <p>(e) Promptly upon the conclusion of the prehearing conference, the hearing officer will issue and deliver to the parties a written prehearing order which confirms and/or identifies:</p> <ul style="list-style-type: none"> (1) the time, place, and date of the hearing; (2) the issues to be adjudicated at the hearing; (3) the relief being sought at the hearing; (4) the deadline for disclosure of evidence and identification of witnesses, which must be at least five business days prior to the scheduled date of the hearing (hereinafter referred to as the "Disclosure Deadline"); (5) the date by which the final decision of the hearing officer shall be issued; and (6) other information determined to be relevant by the hearing officer. <p>(f) No pleadings, other than the request for hearing, and Response to Complaint, if applicable, are mandatory, unless ordered by the hearing officer. Any pleadings after the request for a hearing shall be filed with the hearing officer. Copies of all pleadings shall be sent to all parties of record in the hearing and to the hearing officer. If a party is represented by an</p>	
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<p>§ 300.512 Hearing rights.</p> <p>(a) <i>General.</i> Any party to a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534, or an appeal conducted pursuant to §300.514, has the right to—</p> <ol style="list-style-type: none"> (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities, except that whether parties have the right to be represented by non-attorneys at due process hearings is determined under State law; (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses; (3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing; (4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and (5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions. <p>(b) <i>Additional disclosure of information.</i></p> <ol style="list-style-type: none"> (1) At least five business days prior to a hearing conducted pursuant to §300.511(a), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. (2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party. <p>(c) <i>Parental rights at hearings.</i> Parents involved in hearings must be given the right to—</p> <ol style="list-style-type: none"> (1) Have the child who is the subject of the hearing present; (2) Open the hearing to the public; and (3) Have the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section provided at no cost to parents. <p>(Authority: 20 U.S.C. 1415(f)(2), 1415(h)) Last Amended: 73 FR 73027, Dec. 1, 2008</p>	<p>attorney or a non-attorney determined by the hearing officer to be qualified to represent the party, all copies shall be sent to the attorney of record or non-attorney representative, as applicable. Facsimile copies may be substituted for copies sent by other means. An affirmative statement that a copy of the pleading has been sent to all parties and the hearing officer is sufficient to indicate compliance with this subsection.</p> <p>...</p> <p>Last Amended: December 31, 2013, 38 TexReg 9552</p> <p>§ 89.1180. Prehearing Procedures. [Excerpt]</p> <p>...</p> <p>(g) Discovery methods shall be limited to those specified in the Administrative Procedure Act (APA), Texas Government Code, Chapter 2001, and may be further limited by order of the hearing officer. Upon a party's request to the hearing officer, the hearing officer may issue subpoenas and commissions to take depositions under the APA. Subpoenas and commissions to take depositions shall be issued in the name of the Texas Education Agency.</p> <p>(h) On or before the Disclosure Deadline (which must be at least five business days prior to a scheduled hearing), each party must disclose and provide to all other parties and the hearing officer copies of all evidence (including, without limitation, all evaluations completed by that date and recommendations based on those evaluations) that the party intends to use at the hearing. An index of the documents disclosed must be included with and accompany the documents. Each party must also include with the documents disclosed a list of all witnesses (including their names, addresses, phone numbers, and professions) that the party anticipates calling to testify at the hearing.</p> <p>(i) A party may request a dismissal or nonsuit of a hearing to the same extent that a plaintiff may dismiss or nonsuit a case under the Texas Rules of Civil Procedure, Rule 162. However, if a party requests a dismissal or nonsuit of a hearing after the Disclosure Deadline has passed and, at any time within one year thereafter requests a subsequent hearing involving the same or substantially similar issues as those alleged in the original hearing, then, absent good cause or unless the parties agree otherwise, only evidence disclosed and witnesses identified by the Disclosure Deadline in the original hearing may be introduced at the subsequent hearing.</p> <p>Last Amended: December 31, 2013, 38 TexReg 9552</p> <p>§ 89.1185. Hearing Procedures. [Excerpt]</p> <p>...</p> <p>(c) All persons in attendance shall comport themselves with the same dignity, courtesy, and respect required by the district courts of the State of Texas. All argument shall be made to the hearing officer alone.</p>	<p>§ 29.0162. Representation in Special Education Due Process Hearing.</p> <p>(a) A person in an impartial due process hearing brought under 20 U.S.C. Section 1415 may be represented by:</p> <ol style="list-style-type: none"> (1) an attorney who is licensed in this state; or (2) an individual who is not an attorney licensed in this state but who has special knowledge or training with respect to problems of children with disabilities and who satisfies qualifications under Subsection (b). <p>(b) The commissioner by rule shall adopt additional qualifications and requirements for a representative for purposes of Subsection (a)(2). The rules must:</p> <ol style="list-style-type: none"> (1) prohibit an individual from being a representative under Subsection (a)(2) opposing a school district if: <ol style="list-style-type: none"> (A) the individual has prior employment experience with the district; (B) the district raises an objection to the individual serving as a representative; and (2) include requirements that the representative have knowledge of: <ol style="list-style-type: none"> (A) special education due process rules, hearings, and procedure; and (B) federal and state special education laws. (3) require, if the representative receives monetary compensation from a person for representation in an impartial due process hearing, that the representative agree to abide by a voluntary code of ethics and professional conduct during the period of representation; and (4) require, if the representative receives monetary compensation from a person for representation in an impartial due process hearing, that the representative enter into a written agreement for representation with the person who is the subject of the special education due process hearing that includes a process for resolving any disputes between the representative and the person. <p>(c) A special education due process hearing officer shall determine whether an individual satisfies qualifications under Subsections (a)(2) and (b).</p> <p>(d) The agency is not required to license or in any way other than as provided by Subsection (b) regulate representatives</p>
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<p>§ 300.513 Hearing decisions.</p> <p>(a) <i>Decision of hearing officer on the provision of FAPE.</i></p> <p>(1) Subject to paragraph (a)(2) of this section, a hearing officer's determination of whether a child received FAPE must be based on substantive grounds.</p> <p>(2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies—</p> <p>(i) Impeded the child's right to a FAPE;</p> <p>(ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or</p> <p>(iii) Caused a deprivation of educational benefit.</p> <p>(3) Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under §§300.500 through 300.536.</p> <p>(b) <i>Construction clause.</i> Nothing in §§300.507 through 300.513 shall be construed to affect the right of a parent to file an appeal of the due process hearing decision with the SEA under §300.514(b), if a State level appeal is available.</p>	<p>(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 shall govern the proceedings at the hearing and the Texas Rules of Evidence shall govern evidentiary issues.</p> <p>(e) Before a document may be offered or admitted into evidence, the document must be identified as an exhibit of the party offering the document. All pages within the exhibit must be numbered, and all personally identifiable information concerning any student who is not the subject of the hearing must be redacted from the exhibit.</p> <p>(f) The hearing officer may set reasonable time limits for presenting evidence at the hearing.</p> <p>(g) Upon request, the hearing officer, at his or her discretion, may permit testimony to be received by telephone.</p> <p>(h) Granting of a motion to exclude witnesses from the hearing room shall be at the hearing officer's discretion.</p> <p>(i) Hearings conducted under this division shall be closed to the public, unless the parent requests that the hearing be open.</p> <p>(j) The hearing shall be recorded and transcribed by a court reporter, who shall promptly prepare and transmit a transcript of the evidence to the hearing officer with copies to each of the parties.</p> <p>(k) Filing of post-hearing briefs shall be permitted only upon order of the hearing officer.</p> <p>...</p> <p>Last Amended: December 31, 2013, 38 TexReg 9552</p> <p>§ 89.1185. Hearing Procedures. [Excerpt]</p> <p>...</p> <p>(m) At the request of either party, the hearing officer shall include, in the final decision, specific findings of fact regarding the following issues:</p> <p>(1) whether the parent or the public education agency unreasonably protracted the final resolution of the issues in controversy in the hearing; and</p> <p>(2) if the parent was represented by an attorney, whether the parent's attorney provided the public education agency the appropriate information in the request for a hearing in accordance with 34 CFR, §300.508(b).</p> <p>...</p> <p>Last Amended: December 31, 2013, 38 TexReg 9552</p>	<p>described by Subsection (a)(2) in a special education impartial due process hearing.</p> <p>(e) The written agreement for representation required under Subsection (b)(4) is considered confidential and may not be disclosed.</p> <p>Last Amended: 85th Leg., R.S., Ch. 767 (S.B. 2141), Sec. 1, eff. June 12, 2017</p> <p>§ 29.016. Evaluation Conducted Pursuant to a Special Education Due Process Hearing.</p> <p>A special education hearing officer in an impartial due process hearing brought under 20 U.S.C. Section 1415 may issue an order or decision that authorizes one or more evaluations of a student who is eligible for, or who is suspected as being eligible for, special education services. Such an order or decision authorizes the evaluation of the student without parental consent as if it were a court order for purposes of any state or federal law providing for consent by order of a court.</p> <p>Last Amended: 77th Leg., ch. 767, Sec. 8, eff. June 13, 2001</p>
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(c) *Separate request for a due process hearing.* Nothing in §§300.500 through 300.536 shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

(d) *Findings and decision to advisory panel and general public.* The public agency, after deleting any personally identifiable information, must—

- (1) Transmit the findings and decisions referred to in §300.512(a)(5) to the State advisory panel established under §300.167; and
- (2) Make those findings and decisions available to the public.

(Authority: 20 U.S.C. 1415(f)(3)(E) and (F), 1415(h)(4), 1415(o))
Last Amended: 71 FR 46795, Aug. 14, 2006

§ 300.514 Finality of decision; appeal; impartial review.

(a) *Finality of hearing decision.* A decision made in a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and §300.516.

(b) *Appeal of decisions; impartial review.*

- (1) If the hearing required by §300.511 is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA.
- (2) If there is an appeal, the SEA must conduct an impartial review of the findings and decision appealed. The official conducting the review must—
 - (i) Examine the entire hearing record;
 - (ii) Ensure that the procedures at the hearing were consistent with the requirements of due process;
 - (iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in §300.512 apply;
 - (iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
 - (v) Make an independent decision on completion of the review; and
 - (vi) Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties.

(c) *Findings and decision to advisory panel and general public.* The SEA, after deleting any personally identifiable information, must—

- (1) Transmit the findings and decisions referred to in paragraph (b)(2)(vi) of this section to the State advisory panel established under §300.167; and
- (2) Make those findings and decisions available to the

§ 89.1185. Hearing Procedures. [Excerpt]

...

(n) The decision issued by the hearing officer is final, except that any party aggrieved by the findings and decision made by the hearing officer, or the performance thereof by any other party, may bring a civil action with respect to the issues presented at the hearing in any state court of competent jurisdiction or in a district court of the United States, as provided in 34 CFR, §300.516.

(o) A public education agency shall implement any decision of the hearing officer that is, at least in part, adverse to the public education agency within the timeframe prescribed by the hearing officer or, if there is no timeframe prescribed by the hearing officer, within ten school days after the date the decision was rendered. In accordance with 34 CFR, §300.518(d), a public education agency must implement a hearing officer's decision during the pendency of an appeal, except that the public education agency may withhold reimbursement for past expenses ordered by the hearing officer.

(p) In accordance with 34 CFR, §300.152(c)(3), a parent may file a complaint with the TEA alleging that a public education agency has failed to implement a hearing officer's decision.

Last Amended: December 31, 2013, 38 TexReg 9552

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<p>public.</p> <p>(d) <i>Finality of review decision.</i> The decision made by the reviewing official is final unless a party brings a civil action under §300.516.</p> <p>(Authority: 20 U.S.C. 1415(g) and (h)(4), 1415(i)(1)(A), 1415(i)(2))</p> <p>Last Amended: 71 FR 46795, Aug. 14, 2006</p> <p>§ 300.515 Timelines and convenience of hearings and reviews.</p> <p>(a) The public agency must ensure that not later than 45 days after the expiration of the 30 day period under §300.510(b), or the adjusted time periods described in §300.510(c)—</p> <ol style="list-style-type: none"> (1) A final decision is reached in the hearing; and (2) A copy of the decision is mailed to each of the parties. <p>(b) The SEA must ensure that not later than 30 days after the receipt of a request for a review—</p> <ol style="list-style-type: none"> (1) A final decision is reached in the review; and (2) A copy of the decision is mailed to each of the parties. <p>(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.</p> <p>(d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.</p> <p>(Authority: 20 U.S.C. 1415(f)(1)(B)(ii), 1415(g), 1415(i)(1))</p> <p>Last Amended: 71 FR 46796, Aug. 14, 2006</p> <p>§ 300.516 Civil action.</p> <p>(a) <i>General.</i> Any party aggrieved by the findings and decision made under §§300.507 through 300.513 or §§300.530 through 300.534 who does not have the right to an appeal under §300.514(b), and any party aggrieved by the findings and decision under §300.514(b), has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under §300.507 or §§300.530 through 300.532. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.</p> <p>(b) <i>Time limitation.</i> The party bringing the action shall have 90 days from the date of the decision of the hearing officer or, if</p>	<p>§ 89.1185. Hearing Procedures. [Excerpt]</p> <p>(a) The hearing officer shall afford the parties an opportunity for hearing within the timelines set forth in 34 Code of Federal Regulations (CFR), §300.515 and §300.532, as applicable, unless the hearing officer, at the request of either party, grants an extension of time, except that the timelines for expedited hearings cannot be extended.</p> <p>(b) Each hearing shall be conducted at a time and place that are reasonably convenient to the parents and child involved.</p> <p>...</p> <p>(l) The hearing officer shall issue a final decision, signed and dated, no later than 45 calendar days after the expiration of the 30-day resolution period under 34 CFR, §300.510(b), and §89.1183 of this title (relating to Resolution Process) or the adjusted time periods described in 34 CFR, §300.510(c), and §89.1183 of this title after a request for a due process hearing is received by the Texas Education Agency (TEA), unless the deadline for a final decision has been extended by the hearing officer as provided in §89.1186 of this title (relating to Extensions of Time). A final decision must be in writing and must include findings of fact and conclusions of law separately stated. Findings of fact must be based exclusively on the evidence presented at the hearing. The final decision shall be mailed to each party by the hearing officer on the day that the decision is issued. The hearing officer, at his or her discretion, may render his or her decision following the conclusion of the hearing, to be followed by written findings of fact and written decision.</p> <p>...</p> <p>Last Amended: December 31, 2013, 38 TexReg 9552</p>	
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<p>applicable, the decision of the State review official, to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under Part B of the Act, in the time allowed by that State law.</p> <p>(c) <i>Additional requirements.</i> In any action brought under paragraph (a) of this section, the court—</p> <ol style="list-style-type: none"> (1) Receives the records of the administrative proceedings; (2) Hears additional evidence at the request of a party; and (3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate. <p>(d) <i>Jurisdiction of district courts.</i> The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy.</p> <p>(e) <i>Rule of construction.</i> Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act, the procedures under §§300.507 and 300.514 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.</p> <p>(Authority: 20 U.S.C. 1415(i)(2) and (3)(A), 1415(l)) Last Amended: 71 FR 46796, Aug. 14, 2006</p> <p>§ 300.517 Attorneys' fees.</p> <p>(a) <i>In general.</i></p> <ol style="list-style-type: none"> (1) In any action or proceeding brought under section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to— <ol style="list-style-type: none"> (i) The prevailing party who is the parent of a child with a disability; (ii) To a prevailing party who is an SEA or LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or (iii) To a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation. (2) Nothing in this subsection shall be construed to affect section 327 of the District of Columbia Appropriations 	<p>§ 89.1185. Hearing Procedures. [Excerpt]</p> <p>...</p> <p>(m) At the request of either party, the hearing officer shall include, in the final decision, specific findings of fact regarding the following issues:</p> <ol style="list-style-type: none"> (1) whether the parent or the public education agency unreasonably protracted the final resolution of the issues in controversy in the hearing; and (2) if the parent was represented by an attorney, whether the parent's attorney provided the public education agency the appropriate information in the request for a hearing in accordance with 34 CFR, §300.508(b). <p>...</p> <p>Last Amended: December 31, 2013, 38 TexReg 9552</p>	
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<p>Act, 2005.</p> <p>(b) <i>Prohibition on use of funds.</i></p> <p>(1) Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under section 615 of the Act and subpart E of this part.</p> <p>(2) Paragraph (b)(1) of this section does not preclude a public agency from using funds under Part B of the Act for conducting an action or proceeding under section 615 of the Act.</p> <p>(c) <i>Award of fees.</i> A court awards reasonable attorneys' fees under section 615(i)(3) of the Act consistent with the following:</p> <p>(1) Fees awarded under section 615(i)(3) of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph.</p> <p>(2) (i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent if—</p> <p>(A) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;</p> <p>(B) The offer is not accepted within 10 days; and</p> <p>(C) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.</p> <p>(ii) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation described in §300.506.</p> <p>(iii) A meeting conducted pursuant to §300.510 shall not be considered—</p> <p>(A) A meeting convened as a result of an administrative hearing or judicial action; or</p> <p>(B) An administrative hearing or judicial action for purposes of this section.</p> <p>(3) Notwithstanding paragraph (c)(2) of this section, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.</p> <p>(4) Except as provided in paragraph (c)(5) of this section, the court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the Act, if the court finds that—</p> <p>(i) The parent, or the parent's attorney, during the</p>		
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course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

- (ii) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;
- (iii) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
- (iv) The attorney representing the parent did not provide to the LEA the appropriate information in the due process request notice in accordance with §300.508.

(5) The provisions of paragraph (c)(4) of this section do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the Act.

(Authority: 20 U.S.C. 1415(i)(3)(B)–(G))
 Last Amended: 71 FR 46796, Aug. 14, 2006

§ 300.518 Child's status during proceedings.

- (a) Except as provided in §300.533, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under §300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.
- (b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.
- (c) If the complaint involves an application for initial services under this part from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has turned three, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under §300.300(b), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency.
- (d) If the hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents for purposes of paragraph (a) of this section.

(Authority: 20 U.S.C. 1415(j))
 Last Amended: 71 FR 46797, Aug. 14, 2006

§ 89.1185. Hearing Procedures. [Excerpt]

- ...
- (o) A public education agency shall implement any decision of the hearing officer that is, at least in part, adverse to the public education agency within the timeframe prescribed by the hearing officer or, if there is no timeframe prescribed by the hearing officer, within ten school days after the date the decision was rendered. In accordance with 34 CFR, §300.518(d), a public education agency must implement a hearing officer's decision during the pendency of an appeal, except that the public education agency may withhold reimbursement for past expenses ordered by the hearing officer.
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Last Amended: December 31, 2013, 38 TexReg 9552

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<p>§ 300.519 Surrogate parents.</p> <p>(a) <i>General.</i> Each public agency must ensure that the rights of a child are protected when—</p> <ol style="list-style-type: none"> (1) No parent (as defined in §300.30) can be identified; (2) The public agency, after reasonable efforts, cannot locate a parent; (3) The child is a ward of the State under the laws of that State; or (4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)). <p>(b) <i>Duties of public agency.</i> The duties of a public agency under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method—</p> <ol style="list-style-type: none"> (1) For determining whether a child needs a surrogate parent; and (2) For assigning a surrogate parent to the child. <p>(c) <i>Wards of the State.</i> In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.</p> <p>(d) <i>Criteria for selection of surrogate parents.</i></p> <ol style="list-style-type: none"> (1) The public agency may select a surrogate parent in any way permitted under State law. (2) Public agencies must ensure that a person selected as a surrogate parent— <ol style="list-style-type: none"> (i) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child; (ii) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and (iii) Has knowledge and skills that ensure adequate representation of the child. <p>(e) <i>Non-employee requirement; compensation.</i> A person otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.</p> <p>(f) <i>Unaccompanied homeless youth.</i> In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to paragraph (d)(2)(i) of this section, until a surrogate parent can be appointed that meets all of the requirements of paragraph (d) of this section.</p> <p>(g) <i>Surrogate parent responsibilities.</i> The surrogate parent may</p>	<p>§ 89.1047. Procedures for Surrogate and Foster Parents.</p> <p>(a) An individual assigned to act as a surrogate parent for a student with a disability, in accordance with 34 Code of Federal Regulations (CFR), §300.519, relating to surrogate parents, must comply with the requirements specified in Texas Education Code (TEC), §29.001(10).</p> <ol style="list-style-type: none"> (1) Pursuant to TEC, §29.001(10)(A), an individual assigned to act as a surrogate parent must complete a training program in which the individual is provided with an explanation of the provisions of federal and state laws, rules, and regulations relating to: <ol style="list-style-type: none"> (A) the identification of a student with a disability; (B) the collection of evaluation and re-evaluation data relating to a student with a disability; (C) the admission, review, and dismissal (ARD) committee process; (D) the development of an individualized education program (IEP), including the consideration of transition services for a student who is at least 16 years of age; (E) the determination of least restrictive environment; (F) the implementation of an IEP; (G) the procedural rights and safeguards available under 34 CFR, §§300.148, 300.151-300.153, 300.229, 300.300, 300.500-300.520, 300.530-300.537, and 300.610-300.627, relating to the issues described in 34 CFR, §300.504(c); and (H) the sources that the surrogate parent may contact to obtain assistance in understanding the provisions of federal and state laws, rules, and regulations relating to students with disabilities. (2) The training program described in subsection (a)(1) of this section must be provided in the native language or other mode of communication used by the individual who is to serve as a surrogate parent. (3) The individual assigned to act as a surrogate parent must complete the training program described in subsection (a)(1) of this section within 90 calendar days after the date of initial assignment as a surrogate parent. Once an individual has completed a training program conducted or provided by or through the Texas Department of Family and Protective Services (TDFPS), a school district, an education service center, or any entity that receives federal funds to provide Individuals with Disabilities Education Act (IDEA) training to parents, the individual shall not be required by any school district to complete additional training in order to continue serving as the student's surrogate parent or to serve as the surrogate parent for other students with disabilities. School districts may provide ongoing or additional training to surrogate parents and/or parents; however, a district cannot deny an individual who has received the training as described in subsection (a)(1) of this section from serving as a 	<p>§ 29.001. Statewide Plan. [Excerpt]</p> <p>The agency shall 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 three and 21. The statewide design shall include the provision of services primarily through school districts and shared services arrangements, supplemented by regional education service centers. The agency shall also develop and implement a statewide plan with programmatic content that includes procedures designed to:</p> <p>...</p> <p>(10) ensure that an individual assigned to act as a surrogate parent for a child with a disability, as provided by 20 U.S.C. Section 1415(b), is required to:</p> <ol style="list-style-type: none"> (A) complete a training program that complies with minimum standards established by agency rule; (B) visit the child and the child's school; (C) consult with persons involved in the child's education, including teachers, caseworkers, court-appointed volunteers, guardians ad litem, attorneys ad litem, foster parents, and caretakers; (D) review the child's educational records; (E) attend meetings of the child's admission, review, and dismissal committee; (F) exercise independent judgment in pursuing the child's interests; and (G) exercise the child's due process rights under applicable state and federal law; and <p>...</p> <p>Last Amended: 84th Leg., R.S., Ch. 1192 (S.B. 1259), Sec. 1, eff. June 19, 2015</p> <p>§ 29.015. Foster Parents.</p> <ol style="list-style-type: none"> (a) The school district shall give preferential consideration to a foster parent of a child with a disability when assigning a surrogate parent for the child. (b) A foster parent may act as a parent of a child with a disability, as authorized under 20 U.S.C. Section 1415(b) and its subsequent amendments, if: <ol style="list-style-type: none"> (1) the Department of Protective and Regulatory Services is appointed as the temporary or permanent managing conservator of the child; (2) the child has been placed with the foster parent for at least 60 days; (3) the foster parent agrees to: <ol style="list-style-type: none"> (A) participate in making educational decisions on the child's behalf; and
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<p>represent the child in all matters relating to—</p> <ul style="list-style-type: none"> (1) The identification, evaluation, and educational placement of the child; and (2) The provision of FAPE to the child. <p>(h) <i>SEA responsibility.</i> The SEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.</p> <p>(Authority: 20 U.S.C. 1415(b)(2)) Last Amended: 71 FR 46797, Aug. 14, 2006</p>	<p>surrogate parent on the grounds that the individual has not been trained.</p> <ul style="list-style-type: none"> (4) A school district should provide or arrange for the provision of the training program described in subsection (a)(1) of this section prior to assigning an individual to act as a surrogate parent but no later than 90 calendar days after assignment. <p>(b) A foster parent may act as a parent of a child with a disability, in accordance with 34 CFR, §300.30, relating to the definition of parent, if he/she complies with the requirements of TEC, §29.015(b), relating to foster parents, including the completion of the training program described in subsection (a)(1) of this section.</p> <ul style="list-style-type: none"> (1) The foster parent must complete the training program described in subsection (a)(1) of this section within 90 calendar days after the date of initial assignment as the parent. Once a foster parent has completed a training program conducted or provided by the TDFPS, a school district, an education service center, or any entity that receives federal funds to provide IDEA training to parents, the foster parent shall not be required by any school district to complete additional training in order to continue serving as his/her child's surrogate parent or parent or to serve as the surrogate parent or parent for other students with disabilities. School districts may provide ongoing or additional training to foster parents and/or parents; however, a district cannot deny an individual who has received the training as described in subsection (a)(1) of this section from serving as the parent on the grounds that the individual has not been trained. (2) A school district should provide or arrange for the provision of the training program described in subsection (a)(1) of this section prior to assigning a foster parent to act as a parent but no later than 90 calendar days after assignment. <p>(c) Each school district or shared services arrangement shall develop and implement procedures for conducting an analysis of whether a foster parent or potential surrogate parent has an interest that conflicts with the interests of his/her child. A foster parent in a home which is verified by the TDFPS or a child-placing agency shall not be deemed to have a financial conflict of interest by virtue of serving as the foster parent in that home. These homes include, but are not limited to, basic, habilitative, primary medical, or therapeutic foster or foster group homes. In addition, issues concerning quality of care of the child do not constitute a conflict of interest. Concerns regarding quality of care of the child should be communicated, and may be statutorily required to be reported, to TDFPS.</p> <p>(d) If a school district denies a foster parent the right to serve as a surrogate parent or parent, the school district must provide the foster parent with written notice of such denial within seven calendar days after the date on which the decision is made. The written notice shall:</p>	<ul style="list-style-type: none"> (B) complete a training program for surrogate parents that complies with minimum standards established by agency rule; and (4) the foster parent has no interest that conflicts with the child's interests. <p>(c) A foster parent who is denied the right to act as a surrogate parent or a parent under this section by a school district may file a complaint with the agency in accordance with federal law and regulations.</p> <p>Last Amended: 76th Leg., ch. 430, Sec. 2, eff. Sept. 1, 1999</p>
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<p>§ 300.520 Transfer of parental rights at age of majority.</p> <p>(a) <i>General.</i> A State may provide that, when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be incompetent under State law)—</p> <ol style="list-style-type: none"> (1) (i) The public agency must provide any notice required by this part to both the child and the parents; and (ii) All rights accorded to parents under Part B of the Act transfer to the child; (2) All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and (3) Whenever a State provides for the transfer of rights under this part pursuant to paragraph (a)(1) or (a)(2) of 	<ol style="list-style-type: none"> (1) specify the reason(s) the foster parent is being denied the right to serve as the surrogate parent or parent (the notice must specifically explain the interests of the foster parent that conflict with the interests of his/her child); and (2) inform the foster parent of his/her right to file a complaint with the Texas Education Agency in accordance with 34 CFR, §§300.151-300.153, relating to complaint procedures. <p>Last Amended: November 11, 2007, 32 TexReg 8129</p> <p>§ 89.1115. Memorandum of Understanding Concerning Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities. [Excerpt]</p> <p>...</p> <p>(d) Terms of MOU. The parties agree to the following terms:</p> <p>...</p> <p>(2) Regulatory and planning functions of the parties are coordinated as follows.</p> <p>...</p> <p>(B) TEA will require LEAs to provide:</p> <ol style="list-style-type: none"> (i) the name and phone number of the contact person representing the RF to the surrogate parent, upon assignment of the surrogate parent; (ii) the name and phone number of the surrogate parent, upon assignment of the surrogate parent, to the contact person representing the RF; and (iii) designation and training of surrogate parents in accordance with §89.1047 of this title (relating to Procedures for Surrogate and Foster Parents). <p>...</p> <p>Last Amended: August 6, 2002, 27 TexReg 6851</p> <p>§ 89.1049. Parental Rights Regarding Adult Students. [Excerpt]</p> <p>...</p> <ol style="list-style-type: none"> (b) In accordance with 34 CFR, §300.520(a)(2), and TEC, §29.017(a), all rights accorded to a parent under IDEA, Part B, including the right to receive any notice required by IDEA, Part B, will transfer to an 18-year-old student who is incarcerated in an adult or juvenile, state or local correctional institution, unless the student's parent or other individual has been granted guardianship of the student under the Probate Code, Chapter XIII, Guardianship. (c) In accordance with 34 CFR, §300.520(a)(3), a school district must notify in writing the adult student and parent of the transfer of parental rights, as described in subsections (a) and (b) of this section, at the time the student reaches the age of 18. This notification is separate and distinct from the 	<p>§ 29.017. Transfer of Parental Rights at Age of Majority.</p> <ol style="list-style-type: none"> (a) A student with a disability who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Chapter 31, Family Code, shall have the same right to make educational decisions as a student without a disability, except that the school district shall provide any notice required by this subchapter or 20 U.S.C. Section 1415 to both the student and the parents. All other rights accorded to parents under this subchapter or 20 U.S.C. Section 1415 transfer to the student. (b) All rights accorded to parents under this subchapter or 20 U.S.C. Section 1415 transfer to students who are incarcerated in an adult or juvenile, state or local correctional institution.
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<p>Confinement, Restraint, Seclusion, and Time-Out [Not in Federal Regulations; See Texas Laws and Rules]</p>	<p>§ 89.1053. Procedures for Use of Restraint and Time-Out.</p> <p>(a) Requirement to implement. In addition to the requirements of 34 Code of Federal Regulations (CFR), §300.324(a)(2)(i), school districts and charter schools must implement the provisions of this section regarding the use of restraint and time-out. In accordance with the provisions of Texas Education Code (TEC), §37.0021 (Use of Confinement, Restraint, Seclusion, and Time-Out), it is the policy of the state to treat with dignity and respect all students, including students with disabilities who receive special education services under TEC, Chapter 29, Subchapter A.</p> <p>(b) Definitions.</p> <p>(1) Emergency means a situation in which a student's behavior poses a threat of:</p> <p>(A) imminent, serious physical harm to the student or others; or</p> <p>(B) imminent, serious property destruction.</p> <p>(2) Restraint means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of the student's body.</p> <p>(3) Time-out means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting:</p> <p>(A) that is not locked; and</p> <p>(B) from which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.</p> <p>(c) Use of restraint. A school employee, volunteer, or independent contractor may use restraint only in an emergency as defined in subsection (b) of this section and with the following limitations.</p> <p>(1) Restraint must be limited to the use of such reasonable force as is necessary to address the emergency.</p> <p>(2) Restraint must be discontinued at the point at which the emergency no longer exists.</p> <p>(3) Restraint must be implemented in such a way as to protect the health and safety of the student and others.</p> <p>(4) Restraint must not deprive the student of basic human necessities.</p> <p>(d) Training on use of restraint. Training for school employees, volunteers, or independent contractors must be provided according to the following requirements.</p> <p>(1) A core team of personnel on each campus must be trained in the use of restraint, and the team must include a campus administrator or designee and any general or special education personnel likely to use restraint.</p> <p>(2) Personnel called upon to use restraint in an emergency and who have not received prior training must receive training within 30 school days following the use of restraint.</p>	<p>§ 37.0021. Use of Confinement, Restraint, Seclusion, and Time-out.</p> <p>(a) It is the policy of this state to treat with dignity and respect all students, including students with disabilities who receive special education services under Subchapter A, Chapter 29. A student with a disability who receives special education services under Subchapter A, Chapter 29, may not be confined in a locked box, locked closet, or other specially designed locked space as either a discipline management practice or a behavior management technique.</p> <p>(b) In this section:</p> <p>(1) "Restraint" means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of a student's body.</p> <p>(2) "Seclusion" means a behavior management technique in which a student is confined in a locked box, locked closet, or locked room that:</p> <p>(A) is designed solely to seclude a person; and</p> <p>(B) contains less than 50 square feet of space.</p> <p>(3) "Time-out" means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting:</p> <p>(A) that is not locked; and</p> <p>(B) from which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.</p> <p>(4) "Law enforcement duties" means activities of a peace officer relating to the investigation and enforcement of state criminal laws and other duties authorized by the Code of Criminal Procedure.</p> <p>(c) A school district employee or volunteer or an independent contractor of a district may not place a student in seclusion. This subsection does not apply to the use of seclusion in a court-ordered placement, other than a placement in an educational program of a school district, or in a placement or facility to which the following law, rules, or regulations apply:</p> <p>(1) the Children's Health Act of 2000, Pub. L. No. 106-310, any subsequent amendments to that Act, any regulations adopted under that Act, or any subsequent amendments to those regulations;</p> <p>(2) 40 T.A.C. Sections 720.1001-720.1013; or</p> <p>(3) 25 T.A.C. Section 412.308(e).</p> <p>(d) The commissioner by rule shall adopt procedures for the use of restraint and time-out by a school district employee or volunteer or an independent contractor of a district in the case of a student with a disability receiving special education services under Subchapter A, Chapter 29. A procedure adopted under this subsection must:</p> <p>(1) be consistent with:</p> <p>(A) professionally accepted practices and standards of</p>
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	<p>(3) Training on use of restraint must include prevention and de-escalation techniques and provide alternatives to the use of restraint.</p> <p>(4) All trained personnel must receive instruction in current professionally accepted practices and standards regarding behavior management and the use of restraint.</p> <p>(e) Documentation and notification on use of restraint. In a case in which restraint is used, school employees, volunteers, or independent contractors must implement the following documentation requirements.</p> <p>(1) On the day restraint is utilized, the campus administrator or designee must be notified verbally or in writing regarding the use of restraint.</p> <p>(2) On the day restraint is utilized, a good faith effort must be made to verbally notify the parent(s) regarding the use of restraint.</p> <p>(3) Written notification of the use of restraint must be placed in the mail or otherwise provided to the parent within one school day of the use of restraint.</p> <p>(4) Written documentation regarding the use of restraint must be placed in the student's special education eligibility folder in a timely manner so the information is available to the admission, review, and dismissal (ARD) committee when it considers the impact of the student's behavior on the student's learning and/or the creation or revision of a behavioral intervention plan (BIP).</p> <p>(5) Written notification to the parent(s) and documentation to the student's special education eligibility folder must include the following:</p> <p>(A) name of the student;</p> <p>(B) name of the staff member(s) administering the restraint;</p> <p>(C) date of the restraint and the time the restraint began and ended;</p> <p>(D) location of the restraint;</p> <p>(E) nature of the restraint;</p> <p>(F) a description of the activity in which the student was engaged immediately preceding the use of restraint;</p> <p>(G) the behavior that prompted the restraint;</p> <p>(H) the efforts made to de-escalate the situation and alternatives to restraint that were attempted; and</p> <p>(I) information documenting parent contact and notification.</p> <p>(f) Clarification regarding restraint. The provisions adopted under this section do not apply to the use of physical force or a mechanical device that does not significantly restrict the free movement of all or a portion of the student's body. Restraint that involves significant restriction as referenced in subsection (b)(2) of this section does not include:</p>	<p>student discipline and techniques for behavior management; and</p> <p>(B) relevant health and safety standards; and</p> <p>(2) identify any discipline management practice or behavior management technique that requires a district employee or volunteer or an independent contractor of a district to be trained before using that practice or technique.</p> <p>(e) In the case of a conflict between a rule adopted under Subsection (d) and a rule adopted under Subchapter A, Chapter 29, the rule adopted under Subsection (d) controls.</p> <p>(f) For purposes of this subsection, "weapon" includes any weapon described under Section 37.007(a)(1). This section does not prevent a student's locked, unattended confinement in an emergency situation while awaiting the arrival of law enforcement personnel if:</p> <p>(1) the student possesses a weapon; and</p> <p>(2) the confinement is necessary to prevent the student from causing bodily harm to the student or another person.</p> <p>(g) This section and any rules or procedures adopted under this section do not apply to:</p> <p>(1) a peace officer performing law enforcement duties, except as provided by Subsection (i);</p> <p>(2) juvenile probation, detention, or corrections personnel; or</p> <p>(3) an educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of a school district.</p> <p>(h) This section and any rules or procedures adopted under this section apply to a peace officer only if the peace officer:</p> <p>(1) is employed or commissioned by a school district; or</p> <p>(2) provides, as a school resource officer, a regular police presence on a school district campus under a memorandum of understanding between the district and a local law enforcement agency.</p> <p>(i) A school district shall report electronically to the agency, in accordance with standards provided by commissioner rule, information relating to the use of restraint by a peace officer performing law enforcement duties on school property or during a school-sponsored or school-related activity. A report submitted under this subsection must be consistent with the requirements adopted by commissioner rule for reporting the use of restraint involving students with disabilities.</p> <p>Last Amended: 82nd Leg., R.S., Ch. 691 (H.B. 359), Sec. 2, eff. September 1, 2011 82nd Leg., R.S., Ch. 691 (H.B. 359), Sec. 3, eff. September 1, 2011</p>
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	<ul style="list-style-type: none"> (1) physical contact or appropriately prescribed adaptive equipment to promote normative body positioning and/or physical functioning; (2) limited physical contact with a student to promote safety (e.g., holding a student's hand), prevent a potentially harmful action (e.g., running into the street), teach a skill, redirect attention, provide guidance to a location, or provide comfort; (3) limited physical contact or appropriately prescribed adaptive equipment to prevent a student from engaging in ongoing, repetitive self-injurious behaviors, with the expectation that instruction will be reflected in the individualized education program (IEP) as required by 34 CFR, §300.324(a)(2)(i) to promote student learning and reduce and/or prevent the need for ongoing intervention; or (4) seat belts and other safety equipment used to secure students during transportation. <p>(g) Use of time-out. A school employee, volunteer, or independent contractor may use time-out in accordance with subsection (b)(3) of this section with the following limitations.</p> <ul style="list-style-type: none"> (1) Physical force or threat of physical force must not be used to place a student in time-out. (2) Time-out may only be used in conjunction with an array of positive behavior intervention strategies and techniques and must be included in the student's IEP and/or BIP if it is utilized on a recurrent basis to increase or decrease a targeted behavior. (3) Use of time-out must not be implemented in a fashion that precludes the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP. <p>(h) Training on use of time-out. Training for school employees, volunteers, or independent contractors must be provided according to the following requirements.</p> <ul style="list-style-type: none"> (1) General or special education personnel who implement time-out based on requirements established in a student's IEP and/or BIP must be trained in the use of time-out. (2) Newly-identified personnel called upon to implement time-out based on requirements established in a student's IEP and/or BIP must receive training in the use of time-out within 30 school days of being assigned the responsibility for implementing time-out. (3) Training on the use of time-out must be provided as part of a program which addresses a full continuum of positive behavioral intervention strategies, and must address the impact of time-out on the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP. 	
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<p>Discipline Procedures</p> <p>§ 300.530 Authority of school personnel.</p> <p>(a) <i>Case-by-case determination.</i> School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.</p> <p>(b) <i>General.</i></p> <p>(1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school</p>	<p>(4) All trained personnel must receive instruction in current professionally accepted practices and standards regarding behavior management and the use of time-out.</p> <p>(i) Documentation on use of time-out. Necessary documentation or data collection regarding the use of time-out, if any, must be addressed in the IEP or BIP. The ARD committee must use any collected data to judge the effectiveness of the intervention and provide a basis for making determinations regarding its continued use.</p> <p>(j) Student safety. Any behavior management technique and/or discipline management practice must be implemented in such a way as to protect the health and safety of the student and others. No discipline management practice may be calculated to inflict injury, cause harm, demean, or deprive the student of basic human necessities.</p> <p>(k) Data reporting. With the exception of actions covered by subsection (f) of this section, data regarding the use of restraint must be electronically reported to the Texas Education Agency (TEA) in accordance with reporting standards specified by the TEA.</p> <p>(l) Peace officers. The provisions adopted under this section apply to a peace officer only if the peace officer is employed or commissioned by the school district or provides, as a school resource officer, a regular police presence on a school district campus under a memorandum of understanding between the school district and a local law enforcement agency, except that the data reporting requirements in subsection (k) of this section apply to the use of restraint by any peace officer performing law enforcement duties on school property or during a school-sponsored or school-related activity</p> <p>(m) The provisions adopted under this section do not apply to:</p> <ol style="list-style-type: none"> (1) juvenile probation, detention, or corrections personnel; or (2) an educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of a school district. <p>Last Amended: January 1, 2015, 39 TexReg 10446</p> <p>§ 89.1050. The Admission, Review, and Dismissal (ARD) Committee. [Excerpt]</p> <p>...</p> <p>(k) All disciplinary actions regarding students with disabilities must be determined in accordance with 34 CFR, §§300.101(a) and 300.530-300.536; TEC, Chapter 37, Subchapter A; and §89.1053 of this title (relating to Procedures for Use of Restraint and Time-Out).</p> <p>Last Amended: March 22, 2017, 42 TexReg 1247</p>	<p>§ 25.0342. Transfer of Students who are Victims of or Have Engaged in Bullying. [Excerpt]</p> <p>(a) In this section, "bullying" has the meaning assigned by Section 37.0832.</p> <p>(b) On the request of a parent or other person with authority to act on behalf of a student who is a victim of bullying, the board of trustees of a school district or the board's designee shall transfer the victim to:</p> <ol style="list-style-type: none"> (1) Another classroom at the campus to which the victim was assigned at the time the bullying occurred; or (2) a campus in the school district other than the campus to which the victim was assigned at the time the bullying
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<p>days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §300.536).</p> <p>(2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.</p> <p>(c) <i>Additional authority.</i> For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.</p> <p>(d) <i>Services.</i></p> <p>(1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must—</p> <p>(i) Continue to receive educational services, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and</p> <p>(ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.</p> <p>(2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting.</p> <p>(3) A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.</p> <p>(4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under §300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.</p>		<p>occurred.</p> <p>(b-1) The board of trustees of a school district may transfer the student who engaged in bullying to:</p> <p>(1) another classroom at the campus to which the victim was assigned at the time the bullying occurred; or</p> <p>(2) a campus in the district other than the campus to which the victim was assigned at the time the bullying occurred, in consultation with a parent or other person with authority to act on behalf of the student who engaged in bullying.</p> <p>(b-2) Section 37.004 applies to a transfer under Subsection (b-1) of a student with a disability who receives special education services.</p> <p>...</p> <p>Last Amended: 82nd Leg., R.S., Ch. 776 (H.B. 1942), Sec. 2, eff. June 17, 2011 82nd Leg., R.S., Ch. 776 (H.B. 1942), Sec. 3, eff. June 17, 2011</p> <p>§ 37.001. Student Code of Conduct. [Excerpt]</p> <p>(a) The board of trustees of an independent school district shall, with the advice of its district-level committee established under Subchapter F, Chapter 11, adopt a student code of conduct for the district. The student code of conduct must be posted and prominently displayed at each school campus or made available for review at the office of the campus principal. In addition to establishing standards for student conduct, the student code of conduct must:</p> <p>...</p> <p>(4) specify that consideration will be given, as a factor in each decision concerning suspension, removal to a disciplinary alternative education program, expulsion, or placement in a juvenile justice alternative education program, regardless of whether the decision concerns a mandatory or discretionary action, to:</p> <p>...</p> <p>(D) a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct;</p> <p>...</p> <p>(7) prohibit bullying, harassment, and making hit lists and ensure that district employees enforce those prohibitions;</p> <p>(8) provide, as appropriate for students at each grade level, methods, including options, for:</p> <p>(A) managing students in the classroom and on school grounds;</p> <p>(B) disciplining students; and</p> <p>(C) preventing and intervening in student discipline problems, including bullying, harassment, and making hit lists; and</p> <p>...</p>
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<p>(5) If the removal is a change of placement under §300.536, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section.</p> <p>(e) <i>Manifestation determination.</i></p> <p>(1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—</p> <p>(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or</p> <p>(ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.</p> <p>(2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.</p> <p>(3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.</p> <p>(f) <i>Determination that behavior was a manifestation.</i> If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must—</p> <p>(1) Either—</p> <p>(i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or</p> <p>(ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and</p> <p>(2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.</p> <p>(g) <i>Special circumstances.</i> School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child—</p> <p>(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under</p>	<p>(b) In this section:</p> <p>(1) "Bullying" has the meaning assigned by Section 37.0832.</p> <p>(2) "Harassment" means threatening to cause harm or bodily injury to another student, engaging in sexually intimidating conduct, causing physical damage to the property of another student, subjecting another student to physical confinement or restraint, or maliciously taking any action that substantially harms another student's physical or emotional health or safety.</p> <p>(3) "Hit list" means a list of people targeted to be harmed, using:</p> <p>(A) a firearm, as defined by Section 46.01(3), Penal Code;</p> <p>(B) a knife, as defined by Section 46.01(7), Penal Code; or</p> <p>(C) any other object to be used with intent to cause bodily harm.</p> <p>(b-1) The methods adopted under Subsection (a)(8) must provide that a student who is enrolled in a special education program under Subchapter A, Chapter 29, may not be disciplined for conduct prohibited in accordance with Subsection (a)(7) until an admission, review, and dismissal committee meeting has been held to review the conduct.</p> <p>...</p> <p>Last Amended: 85th Leg., R.S., Ch. 924 (S.B. 1553), Sec. 4, eff. June 15, 2017</p> <p>§ 37.0022. Removal by School Bus Driver.</p> <p>(a) The driver of a school bus transporting students to or from school or a school-sponsored or school-related activity may send a student to the principal's office to maintain effective discipline on the school bus. The principal shall respond by employing appropriate discipline management techniques consistent with the student code of conduct adopted under Section 37.001.</p> <p>(b) Section 37.004 applies to any placement under Subsection (a) of a student with a disability who receives special education services.</p> <p>Last Amended: 83rd Leg., R.S., Ch. 487 (S.B. 1541), Sec. 2, eff. June 14, 2013</p> <p>§ 37.003. Placement Review Committee.</p> <p>(a) Each school shall establish a three-member committee to determine placement of a student when a teacher refuses the return of a student to the teacher's class and make recommendations to the district regarding readmission of expelled students. Members shall be appointed as follows:</p> <p>(1) the campus faculty shall choose two teachers to serve as members and one teacher to serve as an alternate member; and</p>	<p>(b) In this section:</p> <p>(1) "Bullying" has the meaning assigned by Section 37.0832.</p> <p>(2) "Harassment" means threatening to cause harm or bodily injury to another student, engaging in sexually intimidating conduct, causing physical damage to the property of another student, subjecting another student to physical confinement or restraint, or maliciously taking any action that substantially harms another student's physical or emotional health or safety.</p> <p>(3) "Hit list" means a list of people targeted to be harmed, using:</p> <p>(A) a firearm, as defined by Section 46.01(3), Penal Code;</p> <p>(B) a knife, as defined by Section 46.01(7), Penal Code; or</p> <p>(C) any other object to be used with intent to cause bodily harm.</p> <p>(b-1) The methods adopted under Subsection (a)(8) must provide that a student who is enrolled in a special education program under Subchapter A, Chapter 29, may not be disciplined for conduct prohibited in accordance with Subsection (a)(7) until an admission, review, and dismissal committee meeting has been held to review the conduct.</p> <p>...</p> <p>Last Amended: 85th Leg., R.S., Ch. 924 (S.B. 1553), Sec. 4, eff. June 15, 2017</p> <p>§ 37.0022. Removal by School Bus Driver.</p> <p>(a) The driver of a school bus transporting students to or from school or a school-sponsored or school-related activity may send a student to the principal's office to maintain effective discipline on the school bus. The principal shall respond by employing appropriate discipline management techniques consistent with the student code of conduct adopted under Section 37.001.</p> <p>(b) Section 37.004 applies to any placement under Subsection (a) of a student with a disability who receives special education services.</p> <p>Last Amended: 83rd Leg., R.S., Ch. 487 (S.B. 1541), Sec. 2, eff. June 14, 2013</p> <p>§ 37.003. Placement Review Committee.</p> <p>(a) Each school shall establish a three-member committee to determine placement of a student when a teacher refuses the return of a student to the teacher's class and make recommendations to the district regarding readmission of expelled students. Members shall be appointed as follows:</p> <p>(1) the campus faculty shall choose two teachers to serve as members and one teacher to serve as an alternate member; and</p>
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<p>the jurisdiction of an SEA or an LEA;</p> <p>(2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or</p> <p>(3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.</p> <p>(h) <i>Notification.</i> On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in §300.504.</p> <p>(i) <i>Definitions.</i> For purposes of this section, the following definitions apply:</p> <p>(1) <i>Controlled substance</i> means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).</p> <p>(2) <i>Illegal drug</i> means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.</p> <p>(3) <i>Serious bodily injury</i> has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.</p> <p>(4) <i>Weapon</i> has the meaning given the term “dangerous weapon” under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.</p> <p>(Authority: 20 U.S.C. 1415(k)(1) and (7)) Last Amended: 71 FR 46798, Aug. 14, 2006</p>		<p>(2) the principal shall choose one member from the professional staff of a campus.</p> <p>(b) The teacher refusing to readmit the student may not serve on the committee.</p> <p>(c) The committee's placement determination regarding a student with a disability who receives special education services under Subchapter A, Chapter 29, is subject to the requirements of the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.) and federal regulations, state statutes, and agency requirements necessary to carry out federal law or regulations or state law relating to special education.</p> <p>Last Amended: 78th Leg., ch. 1055, Sec. 7, eff. June 20, 2003</p> <p>§ 37.004. Placement of Students with Disabilities. [Excerpt]</p> <p>(a) The placement of a student with a disability who receives special education services may be made only by a duly constituted admission, review, and dismissal committee.</p> <p>(b) Any disciplinary action regarding a student with a disability who receives special education services that would constitute a change in placement under federal law may be taken only after the student's admission, review, and dismissal committee conducts a manifestation determination review under 20 U.S.C. Section 1415(k)(4) and its subsequent amendments. Any disciplinary action regarding the student shall be determined in accordance with federal law and regulations, including laws or regulations requiring the provision of:</p> <ol style="list-style-type: none"> (1) functional behavioral assessments; (2) positive behavioral interventions, strategies, and supports; (3) behavioral intervention plans; and (4) the manifestation determination review. <p>(c) A student with a disability who receives special education services may not be placed in alternative education programs solely for educational purposes.</p> <p>...</p> <p>Last Amended: 78th Leg., ch. 1276, Sec. 6.006, eff. Sept. 1, 2003</p> <p>§ 37.019. Emergency Placement or Expulsion.</p> <p>(a) This subchapter does not prevent the principal or the principal's designee from ordering the immediate placement of a student in a disciplinary alternative education program if the principal or the principal's designee reasonably believes the student's behavior is so unruly, disruptive, or abusive that it seriously interferes with a teacher's ability to communicate effectively with the students in a class, with the ability of the student's classmates to learn, or with the operation of school or a school-sponsored activity.</p> <p>(b) This subchapter does not prevent the principal or the principal's designee from ordering the immediate expulsion of a student if the principal or the principal's designee reasonably believes that action is necessary to protect persons or property</p>
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		<p>from imminent harm.</p> <p>(c) At the time of an emergency placement or expulsion, the student shall be given oral notice of the reason for the action. The reason must be a reason for which placement in a disciplinary alternative education program or expulsion may be made on a nonemergency basis. Within a reasonable time after the emergency placement or expulsion, but not later than the 10th day after the date of the placement or expulsion, the student shall be accorded the appropriate due process as required under Section 37.009. If the student subject to the emergency placement or expulsion is a student with disabilities who receives special education services, the emergency placement or expulsion is subject to federal law and regulations and must be consistent with the consequences that would apply under this subchapter to a student without a disability.</p> <p>(d) A principal or principal's designee is not liable in civil damages for an emergency placement under this section.</p> <p>Last Amended: 78th Leg., ch. 1055, Sec. 20, eff. June 20, 2003</p> <p>§ 37.022. Notice of Disciplinary Action.</p> <p>(a) In this section:</p> <p>(1) "Disciplinary action" means a suspension, expulsion, placement in an alternative education program, or other limitation in enrollment eligibility of a student by a district or school.</p> <p>(2) "District or school" includes an independent school district, a home-rule school district, a campus or campus program charter holder, or an open-enrollment charter school.</p> <p>(b) If a district or school takes disciplinary action against a student and the student subsequently enrolls in another district or school before the expiration of the period of disciplinary action, the governing body of the district or school taking the disciplinary action shall provide to the district or school in which the student enrolls, at the same time other records of the student are provided, a copy of the order of disciplinary action.</p> <p>(c) Subject to Section 37.007(e), the district or school in which the student enrolls may continue the disciplinary action under the terms of the order or may allow the student to attend regular classes without completing the period of disciplinary action.</p> <p>Last Amended: 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(16), eff. September 1, 2005</p> <p>§ 37.0832. Bullying Prevention Policies and Procedures. [Excerpt]</p> <p>(a) In this section:</p> <p>(1) "Bullying":</p> <p>(A) means a single significant act or a pattern of acts by one or more students directed at another student that exploits an imbalance of power and involves</p>
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		<p>engaging in written or verbal expression, expression through electronic means, or physical conduct that satisfies the applicability requirements provided by Subsection (a-1), and that:</p> <ul style="list-style-type: none"> (i) has the effect or will have the effect of physically harming a student, damaging a student's property, or placing a student in reasonable fear of harm to the student's person or of damage to the student's property; (ii) is sufficiently severe, persistent, or pervasive enough that the action or threat creates an intimidating, threatening, or abusive educational environment for a student; (iii) materially and substantially disrupts the educational process or the orderly operation of a classroom or school; or (iv) infringes on the rights of the victim at school; and <p>(B) includes cyberbullying.</p> <p>(2) "Cyberbullying" means bullying that is done through the use of any electronic communication device, including through the use of a cellular or other type of telephone, a computer, a camera, electronic mail, instant messaging, text messaging, a social media application, an Internet website, or any other Internet-based communication tool.</p> <p>(a-1) This section applies to:</p> <ul style="list-style-type: none"> (1) bullying that occurs on or is delivered to school property or to the site of a school-sponsored or school-related activity on or off school property; (2) bullying that occurs on a publicly or privately owned school bus or vehicle being used for transportation of students to or from school or a school-sponsored or school-related activity; and (3) cyberbullying that occurs off school property or outside of a school-sponsored or school-related activity if the cyberbullying: <ul style="list-style-type: none"> (A) interferes with a student's educational opportunities; or (B) substantially disrupts the orderly operation of a classroom, school, or school-sponsored or school-related activity. <p>...</p> <p>(c) The board of trustees of each school district shall adopt a policy, including any necessary procedures, concerning bullying that:</p> <ul style="list-style-type: none"> ... (8) requires that discipline for bullying of a student with disabilities comply with applicable requirements under federal law, including the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.). ...
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<p>§ 300.531 Determination of setting. The child's IEP Team determines the interim alternative educational setting for services under §300.530(c), (d)(5), and (g). (Authority: 20 U.S.C. 1415(k)(2)) Last Amended: 71 FR 46799, Aug. 14, 2006</p>	<p>§ 89.1052. Discretionary Placements in Juvenile Justice Alternative Education Programs.</p> <p>(a) This section applies only to the expulsion of a student with a disability under:</p> <ol style="list-style-type: none"> (1) Texas Education Code (TEC), §37.007(b), (c), or (f); or (2) TEC, §37.007(d), as a result of conduct that contains the elements of any offense listed in TEC, §37.007(b)(2)(C), against any employee or volunteer in retaliation for or as a result of the person's employment or association with a school district. <p>(b) In a county with a Juvenile Justice Alternative Education Program (JJAEP), a local school district must invite the administrator of the JJAEP or the administrator's designee to an admission, review, and dismissal (ARD) committee meeting convened to discuss the expulsion of a student with a disability under one of the provisions listed in subsection (a) of this section, relating to offenses for which a school district may expel a student. The school district must provide written notice of the meeting at least five school days before the meeting or a shorter timeframe agreed to by the student's parents. A copy of the student's current individualized education program (IEP) must be provided to the JJAEP representative with the notice. If the JJAEP representative is unable to attend the ARD committee meeting, the representative must be given the opportunity to participate in the meeting through alternative means, including conference telephone calls. The JJAEP representative may participate in the meeting to the extent that the meeting relates to the student's placement in the JJAEP and implementation of the student's current IEP in the JJAEP.</p> <p>(c) For a student with a disability who was expelled under one of the provisions listed in subsection (a) of this section and placed in the JJAEP, an ARD committee meeting must be convened to reconsider placement of the student in the JJAEP if the JJAEP provides written notice to the school district of specific concerns that the student's educational or behavioral needs cannot be met in the JJAEP. The school district must invite the JJAEP administrator or the administrator's designee to the meeting and must provide written notice of the meeting at least five school days before the meeting or a shorter timeframe agreed to by the student's parents. If the JJAEP representative is unable to attend the ARD committee meeting, the representative must be given the opportunity to participate in the meeting through alternative means, including conference telephone calls. The JJAEP representative may participate in the meeting to the extent that the meeting relates to the student's continued placement in the JJAEP.</p> <p>Last Amended: December 2, 2015, 40 TexReg 8642</p>	<p>Last Amended: 85th Leg., R.S., Ch. 522 (S.B. 179), Sec. 2 & 15, eff. Sept. 1, 2017</p> <p>§ 37.004. Placement of Students with Disabilities. [Excerpt]</p> <p>(a) The placement of a student with a disability who receives special education services may be made only by a duly constituted admission, review, and dismissal committee.</p> <p>...</p> <p>Last Amended: 78th Leg., ch. 1276, Sec. 6.006, Sept. 1, 2003</p>
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<p>§ 300.532 Appeal.</p> <p>(a) <i>General.</i> The parent of a child with a disability who disagrees with any decision regarding placement under §§300.530 and 300.531, or the manifestation determination under §300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to §§300.507 and 300.508(a) and (b).</p> <p>(b) <i>Authority of hearing officer.</i></p> <ol style="list-style-type: none"> (1) A hearing officer under §300.511 hears, and makes a determination regarding an appeal under paragraph (a) of this section. (2) In making the determination under paragraph (b)(1) of this section, the hearing officer may— <ol style="list-style-type: none"> (i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of §300.530 or that the child's behavior was a manifestation of the child's disability; or (ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others. (3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others. <p>(c) <i>Expedited due process hearing.</i></p> <ol style="list-style-type: none"> (1) Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of §§300.507 and 300.508(a) through (c) and §§300.510 through 300.514, except as provided in paragraph (c)(2) through (4) of this section. (2) The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing. (3) Unless the parents and LEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this section, or agree to use the mediation process described in §300.506— <ol style="list-style-type: none"> (i) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and (ii) The due process hearing may proceed unless the 	<p>§ 89.1191. Special Rule for Expedited Due Process Hearings.</p> <p>An expedited due process hearing requested by a party under 34 Code of Federal Regulations (CFR), §300.532, shall be governed by the same procedural rules as are applicable to due process hearings generally, except that:</p> <ol style="list-style-type: none"> (1) the hearing must occur within 20 school days of the date the request for a due process hearing is filed; (2) the hearing officer must make a decision within ten school days after the hearing; (3) unless the parents and the school district agree in writing to waive the resolution meeting required by 34 CFR, §300.532(c)(3)(i), or to use the mediation process described in 34 CFR, §300.506, the resolution meeting must occur within seven calendar days of the receipt of the request for a hearing; (4) the hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of the receipt of the request for a hearing; and (5) the hearing officer shall not grant any extensions of time. <p>Last Amended: December 31, 2013, 38 TexReg 9552</p>	
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<p>matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.</p> <p>(4) A State may establish different State-imposed procedural rules for expedited due process hearings conducted under this section than it has established for other due process hearings, but, except for the timelines as modified in paragraph (c)(3) of this section, the State must ensure that the requirements in §§300.510 through 300.514 are met.</p> <p>(5) The decisions on expedited due process hearings are appealable consistent with §300.514.</p> <p>(Authority: 20 U.S.C. 1415(k)(3) and (4)(B), 1415(f)(1)(A)) Last Amended: 71 FR 46799, Aug. 14, 2006</p> <p>§ 300.533 Placement during appeals.</p> <p>When an appeal under §300.532 has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in §300.530(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.</p> <p>(Authority: 20 U.S.C. 1415(k)(4)(A)) Last Amended: 72 FR 61307, Oct. 30, 2007</p> <p>§ 300.534 Protections for children not determined eligible for special education and related services.</p> <p>(a) <i>General.</i> A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the public agency had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.</p> <p>(b) <i>Basis of knowledge.</i> A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred—</p> <ol style="list-style-type: none"> (1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services; (2) The parent of the child requested an evaluation of the child pursuant to §§300.300 through 300.311; or (3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency. <p>(c) <i>Exception.</i> A public agency would not be deemed to have</p>		
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<p>knowledge under paragraph (b) of this section if—</p> <p>(1) The parent of the child—</p> <p>(i) Has not allowed an evaluation of the child pursuant to §§300.300 through 300.311; or</p> <p>(ii) Has refused services under this part; or</p> <p>(2) The child has been evaluated in accordance with §§300.300 through 300.311 and determined to not be a child with a disability under this part.</p> <p>(d) <i>Conditions that apply if no basis of knowledge.</i></p> <p>(1) If a public agency does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors consistent with paragraph (d)(2) of this section.</p> <p>(2) (i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under §300.530, the evaluation must be conducted in an expedited manner.</p> <p>(ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.</p> <p>(iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with this part, including the requirements of §§300.530 through 300.536 and section 612(a)(1)(A) of the Act.</p> <p>(Authority: 20 U.S.C. 1415(k)(5)) Last Amended: 71 FR 46799, Aug. 14, 2006</p> <p>§ 300.535 Referral to and action by law enforcement and judicial authorities.</p> <p>(a) <i>Rule of construction.</i> Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.</p> <p>(b) <i>Transmittal of records.</i></p> <p>(1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.</p>		<p>§ 37.010. Court Involvement. [Excerpt]</p> <p>(a) Not later than the second business day after the date a hearing is held under Section 37.009, the board of trustees of a school district or the board's designee shall deliver a copy of the order placing a student in a disciplinary alternative education program under Section 37.006 or expelling a student under Section 37.007 and any information required under Section 52.04, Family Code, to the authorized officer of the juvenile court in the county in which the student resides. In a county that operates a program under Section 37.011, an expelled student shall to the extent provided by law or by the memorandum of understanding immediately attend the educational program from the date of expulsion, except that in a county with a population greater than 125,000, every expelled student who is not detained or receiving treatment</p>
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(2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

(Authority: 20 U.S.C. 1415(k)(6))
Last Amended: 71 FR 46800, Aug. 14, 2006

§ 300.536 Change of placement because of disciplinary removals.

(a) For purposes of removals of a child with a disability from the child's current educational placement under §§300.530 through 300.535, a change of placement occurs if—

- (1) The removal is for more than 10 consecutive school days; or
- (2) The child has been subjected to a series of removals that constitute a pattern—
 - (i) Because the series of removals total more than 10 school days in a school year;
 - (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
 - (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

(b) (1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

(2) This determination is subject to review through due process and judicial proceedings.

(Authority: 20 U.S.C. 1415(k))
Last Amended: 71 FR 46800, Aug. 14, 2006

§ 300.537 State enforcement mechanisms.

Notwithstanding §§300.506(b)(7) and 300.510(d)(2), which provide for judicial enforcement of a written agreement reached as a result of mediation or a resolution meeting, there is nothing in this part that would prevent the SEA from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a State court of competent jurisdiction or in a district court of the United States.

(Authority: 20 U.S.C. 1415(e)(2)(F), 1415(f)(1)(B))
Last Amended: 71 FR 46800, Aug. 14, 2006

§§ 300.538–300.599 [Reserved]

under an order of the juvenile court must be enrolled in an educational program.

(b) If a student is expelled under Section 37.007(c), the board or its designee shall refer the student to the authorized officer of the juvenile court for appropriate proceedings under Title 3, Family Code.

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Last Amended: 78th Leg., ch. 1055, Sec. 15, eff. June 20, 2003

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Subpart F Monitoring, Enforcement, Confidentiality, and Program Information	Texas Administrative Code	Texas Education Code
<p>Monitoring, Technical Assistance, and Enforcement</p> <p>§ 300.600 State monitoring and enforcement.</p> <p>(a) The State must—</p> <ol style="list-style-type: none"> (1) Monitor the implementation of this part, (2) Make determinations annually about the performance of each LEA using the categories in §300.603(b)(1); (3) Enforce this part, consistent with §300.604, using appropriate enforcement mechanisms, which must include, if applicable, the enforcement mechanisms identified in §300.604(a)(1) (technical assistance), (a)(3) (conditions on funding of an LEA), (b)(2)(i) (a corrective action plan or improvement plan), (b)(2)(v) (withholding funds, in whole or in part, by the SEA), and (c)(2) (withholding funds, in whole or in part, by the SEA); and (4) Report annually on the performance of the State and of each LEA under this part, as provided in §300.602(b)(1)(i)(A) and (b)(2). <p>(b) The primary focus of the State’s monitoring activities must be on—</p> <ol style="list-style-type: none"> (1) Improving educational results and functional outcomes for all children with disabilities; and (2) Ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities. <p>(c) As a part of its responsibilities under paragraph (a) of this section, the State must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in paragraph (d) of this section, and the indicators established by the Secretary for the State performance plans.</p> <p>(d) The State must monitor the LEAs located in the State, using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:</p> <ol style="list-style-type: none"> (1) Provision of FAPE in the least restrictive environment. (2) State exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services as defined in §300.43 and in 20 U.S.C. 1437(a)(9). (3) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification. 	<p>§ 89.1053. Procedures for Use of Restraint and Time-Out. [Excerpt]</p> <p>...</p> <p>(k) Data reporting. With the exception of actions covered by subsection (f) of this section, data regarding the use of restraint must be electronically reported to the Texas Education Agency (TEA) in accordance with reporting standards specified by the TEA.</p> <p>(l) Peace officers. The provisions adopted under this section apply to a peace officer only if the peace officer is employed or commissioned by the school district or provides, as a school resource officer, a regular police presence on a school district campus under a memorandum of understanding between the school district and a local law enforcement agency, except that the data reporting requirements in subsection (k) of this section apply to the use of restraint by any peace officer performing law enforcement duties on school property or during a school-sponsored or school-related activity.</p> <p>...</p> <p>Last Amended: January 1, 2015, 39 TexReg 10446</p> <p>§ 97.1001. Accountability Rating System.</p> <p>(a) The rating standards established by the commissioner of education under Texas Education Code (TEC), §§39.052(a) and (b)(1)(A); 39.053, 39.0535, 39.054, 39.0545, 39.0548, 39.055, 39.151, 39.201, 39.2011, 39.202, 39.203, 29.081(e), and 12.104(b)(2)(L), as those sections existed on January 1, 2017, shall be used to evaluate the performance of districts, campuses, and charter schools. The indicators, standards, and procedures used to determine ratings will be annually published in official Texas Education Agency publications. These publications will be widely disseminated and cover the following:</p> <ol style="list-style-type: none"> (1) indicators, standards, and procedures used to determine district ratings; (2) indicators, standards, and procedures used to determine campus ratings; (3) indicators, standards, and procedures used to determine distinction designations; and (4) procedures for submitting a rating appeal. <p>(b) The procedures by which districts, campuses, and charter schools are rated and acknowledged for 2017* are based upon specific criteria and calculations, which are described in excerpted sections of the <i>2017* Accountability Manual</i> provided in this subsection.</p>	<p>§ 29.010. Compliance. [Excerpt]</p> <p>(a) The agency shall adopt and implement a comprehensive system for monitoring school district compliance with federal and state laws relating to special education. The monitoring system must provide for ongoing analysis of district special education data and of complaints filed with the agency concerning special education services and for inspections of school districts at district facilities. The agency shall use the information obtained through analysis of district data and from the complaints management system to determine the appropriate schedule for and extent of the inspection.</p> <p>(b) To complete the inspection, the agency must obtain information from parents and teachers of students in special education programs in the district.</p> <p>...</p> <p>(f) This section does not create an obligation for or impose a requirement on a school district or open-enrollment charter school that is not also created or imposed under another state law or a federal law.</p> <p>Last Amended: 76th Leg., ch. 1417, Sec. 1, eff. June 19, 1999</p> <p>§ 29.012. Residential Facilities. [EXCERPT]</p> <p>...</p> <p>(c-1) The commissioner by rule shall require each school district and open-enrollment charter school to include in the district’s or school’s Public Education Information Management System (PEIMS) report the number of children with disabilities residing in a residential facility who:</p> <ol style="list-style-type: none"> (1) are required to be tracked by the Residential Facility Monitoring (RFM) System; and (2) receive educational services from the district or scho <p>...</p> <p>Last Amended: 85th Leg., R.S., Ch. 1026 (H.B. 1569), Sec. 1, eff. June 15, 2017 85th Leg., R.S., Ch. 764 (S.B. 2080), Sec. 1, June 12, 2017</p> <p>§ 29.313. Evaluation of Programs.</p> <p>Each school district must provide continuous evaluation of the effectiveness of programs of the district for students who are deaf or hard of hearing. If practicable, evaluations shall follow program excellence indicators established by the agency.</p> <p>Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995</p>

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<p>(e) In exercising its monitoring responsibilities under paragraph (d) of this section, the State must ensure that when it identifies noncompliance with the requirements of this part by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance.</p> <p>(Authority: 20 U.S.C. 1416(a)) Last Amended: 73 FR 73027, Dec. 1, 2008</p>	<p>Figure: 19 TAC §97.1001(b)</p> <p>(c) Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.056 and §39.057.</p> <p>(d) The specific criteria and calculations used in the accountability manual are established annually by the commissioner of education and communicated to all school districts and charter schools.</p> <p>(e) The specific criteria and calculations used in the annual accountability manual adopted for prior school years remain in effect for all purposes, including accountability, data standards, and audits, with respect to those school years.</p> <p>* Check the TAC for the amendments subsequent to 2017. Last Amended: June 27, 2017, 42 TexReg 3269</p> <p>§ 97.1005. Performance-Based Monitoring Analysis System.</p> <p>(a) In accordance with Texas Education Code, §7.028(a), the purpose of the Performance-Based Monitoring Analysis System (PBMAS) is to report annually on the performance of school districts and charter schools in selected program areas: bilingual education/English as a Second Language, career and technical education, special education, and certain Title programs under federal law. The performance of a school district or charter school is reported through indicators of student performance and program effectiveness and corresponding performance levels established by the commissioner of education.</p> <p>(b) The assignment of performance levels for school districts and charter schools in the 2017* PBMAS is based on specific criteria and calculations, which are described in the 2017* PBMAS Manual provided in this subsection.</p> <p>Figure: 19 TAC §97.1005(b)</p> <p>(c) The specific criteria and calculations used in the PBMAS are established annually by the commissioner of education and communicated to all school districts and charter schools.</p> <p>(d) The specific criteria and calculations used in the annual PBMAS manual adopted for prior school years remain in effect for all purposes, including accountability and performance monitoring, data standards, and audits, with respect to those school years.</p> <p>* Check the TAC for the amendments subsequent to 2017. Last Amended: August 14, 2017, 42 TexReg 3969</p> <p>§ 97.1011. Memorandum of Understanding between the Texas Education Agency and the Texas School for the Deaf.</p> <p>(a) Purpose. This memorandum of understanding (MOU) is a non-financial, mutual agreement between the Texas School for the Deaf, hereafter referred to as "the School," and the Texas Education Agency, hereafter referred to as "the Agency," established pursuant to the Texas Education Code (TEC), §29.315. This MOU will establish:</p>	<p>§ 29.315. Texas School for the Deaf Memorandum of Understanding.</p> <p>The Texas Education Agency and the Texas School for the Deaf shall develop, agree to, and by commissioner rule adopt no later than September 1, 1998, a memorandum of understanding to establish:</p> <ol style="list-style-type: none"> (1) the method for developing and reevaluating a set of indicators of the quality of learning at the Texas School for the Deaf; (2) the process for the agency to conduct and report on an annual evaluation of the school's performance on the indicators; (3) the requirements for the school's board to publish, discuss, and disseminate an annual report describing the educational performance of the school; (4) the process for the agency to assign an accreditation status to the school, to reevaluate the status on an annual basis, and, if necessary, to conduct monitoring reviews; and (5) the type of information the school shall be required to provide through the Public Education Information Management System (PEIMS). <p>Last Amended: 84th Leg., Ch. 1046 (H.B. 1842), Sec. 5, eff. June 19, 2015</p> <p>§ 30.002. Education for Children with Visual Impairments. [Excerpt]</p> <p>...</p> <p>(b) The agency shall:</p> <ol style="list-style-type: none"> (1) develop standards and guidelines for all special education services for children with visual impairments that it is authorized to provide or support under this code; (2) supervise regional education service centers and other entities in assisting school districts in serving children with visual impairments more effectively; (3) develop and administer special education services for students with both serious visual and auditory impairments; (4) evaluate special education services provided for children with visual impairments by school districts and approve or disapprove state funding of those services; and (5) maintain an effective liaison between special education programs provided for children with visual impairments by school districts and related initiatives of the Department of Assistive and Rehabilitative Services Division for Blind Services, the Department of State Health Services Mental Health and Substance Abuse Division, the Texas School for the Blind and Visually Impaired, and other related programs, agencies, or facilities as appropriate. <p>...</p> <p>Last Amended: 83rd Leg., R.S., Ch. 505 (S.B. 39), Sec. 1, eff. June 14, 2013 83rd Leg., R.S., Ch. 637 (H.B. 590), Sec. 1, eff. September 1, 2013</p>
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	<ul style="list-style-type: none"> (1) the method for developing and reevaluating a set of indicators of the quality of learning at the School; (2) the process for the Agency to conduct and report on an annual evaluation of the School's performance on the indicators; (3) the requirements for the School's Board to publish, discuss, and disseminate an annual report describing the educational performance of the School; (4) the process for the Agency to assign an accreditation status to the School, to reevaluate the status on an annual basis, and, if necessary, to make on-site accreditation investigations; and (5) the type of information the School shall be required to provide through the Public Education Information Management System (PEIMS). <p>(b) Accountability compliance reviews.</p> <ul style="list-style-type: none"> (1) The Agency shall monitor the School's compliance with federal and state laws and regulations related to services for special populations by conducting a periodic on-site review. The Agency shall determine the schedule for the review. (2) The Agency, with input from the School, shall develop a compliance monitoring instrument that itemizes compliance indicators that are the responsibility of the School. The instrument will be disseminated to the School and updated jointly as appropriate. <p>(c) Indicators of quality of learning for the School.</p> <ul style="list-style-type: none"> (1) No later than August 31, 1999, the Agency and the School shall jointly develop and agree upon a set of quality indicators that are appropriate to the characteristics of students served by the School. (2) Annually, the commissioner of education shall approve indicators of performance that measure the quality of student learning at the School. (3) The indicators shall include measures of academic and/or developmental performance as well as other measures appropriate to the characteristics of the student populations served. (4) To the extent appropriate, the indicators shall incorporate academic excellence indicators and alternative assessment measures required under TEC, Chapter 39, Subchapter B. <p>(d) Annual performance evaluation.</p> <ul style="list-style-type: none"> (1) The School's annual performance evaluation shall be based on quality indicators selected annually from among the set of quality indicators developed and jointly agreed upon by the School and the Agency to address the characteristics of the student groups served. (2) The selected quality indicators used for the annual performance evaluation shall measure, as appropriate, academic and/or non-academic performance on norm- or criterion-referenced instruments; progress in the 	<p>§ 30.005. Texas School for the Blind and Visually Impaired Memorandum of Understanding.</p> <p>The Texas Education Agency and the Texas School for the Blind and Visually Impaired shall develop, agree to, and by commissioner rule adopt a memorandum of understanding to establish:</p> <ul style="list-style-type: none"> (1) the method for developing and reevaluating a set of indicators of the quality of learning at the Texas School for the Blind and Visually Impaired; (2) the process for the agency to conduct and report on an annual evaluation of the school's performance on the indicators; (3) the requirements for the school's board to publish, discuss, and disseminate an annual report describing the educational performance of the school; (4) the process for the agency to: <ul style="list-style-type: none"> (A) assign an accreditation status to the school; (B) reevaluate the status on an annual basis; and (C) if necessary, conduct monitoring reviews; and (5) the type of information the school shall be required to provide through the Public Education Information Management System (PEIMS). <p>Last Amended: 84th Leg., R.S., Ch. 1046 (H.B. 1842), Sec. 6, eff. June 19, 2015</p> <p>§ 37.0021. Use of Confinement, Restraint, Seclusion, and Time-out. [Excerpt]</p> <p>...</p> <ul style="list-style-type: none"> (i) A school district shall report electronically to the agency, in accordance with standards provided by commissioner rule, information relating to the use of restraint by a peace officer performing law enforcement duties on school property or during a school-sponsored or school-related activity. A report submitted under this subsection must be consistent with the requirements adopted by commissioner rule for reporting the use of restraint involving students with disabilities. <p>Last Amended: 82nd Leg., R.S., Ch. 691 (H.B. 359), Sec. 2, eff. September 1, 2011 82nd Leg., R.S., Ch. 691 (H.B. 359), Sec. 3, eff. September 1, 2011</p> <p>§ 39.052. Determination of Accreditation Status or Performance Rating. [Excerpt]</p> <p>...</p> <ul style="list-style-type: none"> (b) In determining the accreditation status of a school district, the commissioner: <ul style="list-style-type: none"> ... (2) may evaluate and consider: <ul style="list-style-type: none"> ... (B) the effectiveness of the district's programs for special populations; and ...
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	<p>attainment of student individualized education program goals and objectives; statewide criterion-referenced assessments; completion of courses or credits; or completion of graduation requirements. Additional non-academic indicators may be selected that measure dropout rates, attendance, or other appropriate measures of student success.</p> <p>(3) The method for evaluating the School's annual performance shall be as follows.</p> <p>(A) Annually, by September 1, the School shall submit to the commissioner an accountability proposal. The proposal shall be developed with input from the School's planning and decision-making committee and shall include the following information to be used to determine the current year accountability rating:</p> <p>(i) quality indicators;</p> <p>(ii) performance objectives within each indicator; and</p> <p>(iii) minimum standards for determining achievement of performance objectives.</p> <p>(B) By September 15, the commissioner shall review the proposal and notify the School superintendent of approval, or needed modifications to obtain approval, of the proposed indicators and performance objectives to be used for determining an accountability rating.</p> <p>(C) By November 1, the commissioner shall provide notification of final approval of the proposal indicators and performance objectives.</p> <p>(D) By July 1 following the year for which the School's performance is being evaluated, the School shall submit to the Agency all complete and accurate data necessary to document performance with respect to the approved indicators and performance objectives selected for rating purposes under the accountability system.</p> <p>(4) The schedule of activities related to the annual performance evaluation shall include the following activities.</p> <p>(A) During the 1998-1999 school year, the School and the Agency shall determine methods of evaluating student performance for determining achievement of performance objectives.</p> <p>(B) During the 1999-2000 school year, the School shall evaluate student performance in areas addressed by the quality indicators.</p> <p>(C) Beginning with the 2000-2001 school year, the Agency shall perform an annual performance evaluation for the School.</p> <p>(e) Accreditation status.</p>	<p>(c) Based on a school district's performance under Subsection (b), the commissioner shall:</p> <p>(1) assign each district an accreditation status; or</p> <p>(2) revoke the accreditation of the district and order closure of the district.</p> <p>(d) A school district's accreditation status may be raised or lowered based on the district's performance or may be lowered based on the performance of one or more campuses in the district that is below a standard required under this subchapter.</p> <p>(e) The commissioner shall notify a school district that receives an accreditation status of accredited-warned or accredited-probation or a campus that performs below a standard required under this subchapter that the performance of the district or campus is below a standard required under this subchapter. The commissioner shall require the district to notify the parents of students enrolled in the district and property owners in the district of the district's accreditation status and the implications of that accreditation status.</p> <p>(f) A school district that is not accredited may not receive funds from the agency or hold itself out as operating a public school of this state.</p> <p>...</p> <p>Last Amended: 85th Leg., R.S., Ch. 807 (H.B. 22), Sec. 7, eff. June 15, 2017</p> <p>§ 39.056. Monitoring Reviews. [Excerpt]</p> <p>(a) The commissioner may direct the agency to conduct monitoring reviews and random on-site visits of a school district at any time as authorized by Section 7.028.</p> <p>...</p> <p>Last Amended: 84th Leg., R.S., Ch. 1046 (H.B. 1842), Sec. 7, eff. June 19, 2015 84th Leg., R.S., Ch. 1094 (H.B. 2804), Sec. 16, eff. June 19, 2015</p> <p>§ 39.057. Special Accreditation Investigations. [Excerpt]</p> <p>(a) The commissioner may authorize special accreditation investigations to be conducted:</p> <p>...</p> <p>(3) in response to complaints submitted to the agency with respect to alleged violations of civil rights or other requirements imposed on the state by federal law or court order;</p> <p>...</p> <p>(7) when excessive numbers of students in special education programs under Subchapter A, Chapter 29, are assessed through assessment instruments developed or adopted under Section 39.023(b);</p> <p>...</p> <p>Last Amended: 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec.</p>
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	<ul style="list-style-type: none"> (1) By September 1, the commissioner shall assign the School a rating of "acceptable" or "needing on-site review." (2) To attain a rating of "acceptable," the School shall attain all approved performance objectives established for each selected indicator. (3) If the School receives a rating of "needing on-site review," the School may appeal the rating to the commissioner of education by October 1. The rating will be final by November 1. (4) The determination of the performance rating may include consideration of the effectiveness of the special education program based on the Agency's most recent compliance review of the school and program for special populations. (f) On-site investigation and sanctions. If the School does not receive an accreditation rating of "acceptable," the commissioner may take any of the following actions, listed in order of severity, to the extent the commissioner determines necessary: <ul style="list-style-type: none"> (1) direct the Agency to conduct an on-site investigation, in accordance with the provisions of TEC, §39.074(c)-(e), and, raise or maintain the performance rating as a result of the investigation; (2) order the preparation of a student achievement improvement plan that addresses each quality indicator for which the School's performance is unacceptable, the submission of the plan to the commissioner for approval, and implementation of the plan; or (3) appoint a special campus intervention team, the criteria for membership of which shall be mutually agreed upon by the Agency and the School, the costs for which shall be paid for by the School, to: <ul style="list-style-type: none"> (A) conduct a comprehensive on-site evaluation of the School to determine the cause for the School's low performance and lack of progress; (B) recommend actions, including reallocation of resources and technical assistance; changes in school procedures or operations; staff development for instructional and administrative staff; intervention for individual administrators or teachers; waivers from state statute or rule; or other actions the team considers appropriate; (C) assist in the development of a school plan for student achievement; and (D) assist the commissioner in monitoring the progress of the School in implementing the School plan for improvement of student achievement. (g) Annual performance report. <ul style="list-style-type: none"> (1) The Governing Board of the School shall publish an annual report describing the educational performance of the School. The report shall include the School's performance objectives, progress toward these 	<p>21.003(21), eff. Sept. 1, 2017</p>
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	<p>objectives, and the School's performance rating assigned by the Agency. Supplemental information to be included in the report shall be determined by the School's Governing Board.</p> <p>(2) The Governing Board of the School will disseminate the annual performance report to parents of enrolled students, districts that have placed students at the School, and regional education service centers (RESCs). Additionally, the Governing Board will notify the parents of enrolled students, districts that have placed students at the School, and RESCs of an opportunity for public discussion of the annual performance report at a regularly scheduled board meeting. The School's planning and decision-making committee will hold at least one public meeting annually for the purpose of discussing the School's performance report.</p> <p>(3) By December 1, the School shall disseminate the annual performance report.</p> <p>(h) Reporting of data.</p> <p>(1) The School will report PEIMS data according to the following schedule.</p> <p>(A) The Agency and the School shall jointly develop separate action plans for the possible collection of organization, student, staff, and financial data. The action plan for organization and student data shall be completed by June 1998; for staff data by June 1999; and for financial data by June 2000.</p> <p>(B) The Agency and the School shall conduct studies to determine the feasibility of collecting data for each information category according to the following schedule: organization and student data during the 1998-1999 school year; staff data during the 1999-2000 school year; and financial data during the 2000-2001 school year.</p> <p>(C) In each information category for which it is determined that data collection is feasible, the Agency and the School shall pilot the collection as follows: organization and student data during the 1999-2000 school year; staff data during the 2000-2001 school year; and financial data during the 2001-2002 school year.</p> <p>(D) Initial PEIMS collection shall be contingent on resolution of feasibility issues and modifications indicated by the pilot process.</p> <p>(2) To the extent possible, the Agency shall assist the School in accessing available resources to implement this section of the MOU.</p> <p>(i) Dispute resolution. Disputes between the School and the Agency concerning implementation of this MOU shall be resolved as follows.</p> <p>(1) Staff of the School and the Agency shall identify and attempt to resolve the specific issues involved in the dispute.</p>	
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	<ul style="list-style-type: none"> (2) If staff of the School and the Agency are unable to resolve the dispute after a reasonable time period, the executive officers of the School and the Agency shall assist the staff in identifying a mutually agreeable resolution to the dispute. (3) If the executive officers (or either of them) are unable to reach a mutually agreeable resolution, the School and the Agency shall pursue resolution through the use of mediation pursuant to the Governmental Dispute Resolution Act, Government Code, Chapter 2008. The mediator shall make such arrangements and decisions respecting the conduct of the proceedings as needed in the sole discretion of the mediator. The costs of mediation shall be borne equally by the School and the Agency. (4) If the School and the Agency fail to reach agreement through mediation pursuant to the Governmental Dispute Resolution Act, Government Code, Chapter 2008, the following procedure shall be followed. <ul style="list-style-type: none"> (A) The School and the Agency shall each select one impartial third party pursuant to Government Code, §2008.053. (B) The impartial third parties selected by the School and the Agency shall jointly select another impartial third party, who must be a person eligible to serve as impartial third party pursuant to Government Code, §2008.053. The person selected shall be the arbitrator of the dispute. (C) The arbitrator selected by the impartial third parties selected by the School and the Agency shall arbitrate the dispute pursuant to Texas Civil Practice and Remedies Code, §154.027. The arbitrator shall make such arrangements and decisions respecting the conduct of the proceedings as needed in the sole discretion of the arbitrator. The costs of arbitration shall be borne equally by the School and the Agency. The parties hereby stipulate in advance that the decision of the arbitrator shall be binding and enforceable against both parties pursuant to Texas Civil Practice and Remedies Code, §154.027(b). (j) Other terms. <ul style="list-style-type: none"> (1) This MOU shall be signed by the executive officers of the School and the Agency and shall be effective September 1, 1998. (2) This MOU may be considered for expansion, modification, or amendment upon mutual agreement of the executive officers of the School and the Agency. (3) In the event that federal and/or state laws should be amended, federally interpreted, or judicially interpreted so as to render continued implementation of this MOU unreasonable or impossible, the School and the Agency may agree to amend or terminate this MOU. 	
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	<p>Last Amended: September 1, 1998, 24 TexReg 7781</p> <p>§ 97.1012. Memorandum of Understanding between the Texas Education Agency and the Texas School for the Blind and Visually Impaired.</p> <p>(a) Purpose. This memorandum of understanding (MOU) is a non-financial, mutual agreement between the Texas School for the Blind and Visually Impaired, hereafter referred to as "the School," and the Texas Education Agency, hereafter referred to as "the Agency," established pursuant to the Texas Education Code (TEC), §30.005. This MOU will establish:</p> <ol style="list-style-type: none"> (1) the method for developing and reevaluating a set of indicators of the quality of learning at the School; (2) the process for the Agency to conduct and report on an annual evaluation of the School's performance on the indicators; (3) the requirements for the School's Board to publish, discuss, and disseminate an annual report describing the educational performance of the School; and (4) the type of information the School shall be required to provide through the Public Education Information Management System (PEIMS). <p>(b) Accountability compliance reviews.</p> <ol style="list-style-type: none"> (1) The Agency shall monitor the School's compliance with federal and state laws and regulations related to services for special populations by conducting a periodic on-site review. The Agency shall determine the schedule for the review. (2) The Agency, with input from the School, shall develop a compliance monitoring instrument that itemizes compliance indicators that are the responsibility of the School. The instrument will be disseminated to the School and updated jointly as appropriate. <p>(c) Indicators of quality of learning for the School.</p> <ol style="list-style-type: none"> (1) No later than August 31, 1999, the Agency and the School shall jointly develop and agree upon a set of quality indicators that are appropriate to the characteristics of students served by the School. (2) Annually, the commissioner of education shall approve indicators of performance that measure the quality of student learning at the School. (3) The indicators shall include measures of academic and/or developmental performance as well as other measures appropriate to the characteristics of the student populations served. (4) To the extent appropriate, the indicators shall incorporate academic excellence indicators and alternative assessment measures required under TEC, Chapter 39, Subchapter B. <p>(d) Annual performance evaluation.</p>	
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	<ul style="list-style-type: none"> (1) The School's annual performance evaluation shall be based on quality indicators selected annually from among the set of quality indicators developed and jointly agreed upon by the School and the Agency to address the characteristics of the student groups served. (2) The selected quality indicators used for the annual performance evaluation shall measure, as appropriate, academic and/or non-academic performance on norm- or criterion-referenced instruments; progress in the attainment of student individualized education program goals and objectives; statewide criterion-referenced assessments; completion of courses or credits; or completion of graduation requirements. Additional non-academic indicators may be selected that measure dropout rates, attendance, or other appropriate measures of student success. (3) The method for evaluating the School's annual performance shall be as follows. <ul style="list-style-type: none"> (A) Annually, by September 1, the School shall submit to the commissioner an accountability proposal. The proposal shall be developed with input from the School's planning and decision-making committee and shall include the following information: <ul style="list-style-type: none"> (i) quality indicators; (ii) performance objectives within each indicator; and (iii) minimum standards for determining achievement of performance objectives. (B) By September 15, the commissioner shall review the proposal and notify the School superintendent of approval, or needed modifications to obtain approval, of the proposed indicators and performance objectives. (C) By November 1, the commissioner shall provide notification of final approval of the proposal indicators and performance objectives. (D) By July 1 following the year for which the School's performance is being evaluated, the School shall submit to the Agency all complete and accurate data necessary to document performance with respect to the approved indicators and performance objectives. (4) The schedule of activities related to the annual performance evaluation shall include the following activities. <ul style="list-style-type: none"> (A) During the 1998-1999 school year, the School and the Agency shall determine methods of evaluating student performance for determining achievement of performance objectives. (B) During the 1999-2000 school year, the School shall evaluate student performance in areas addressed by the quality indicators. 	
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	<p>(C) Beginning with the 2000-2001 school year, the Agency shall perform an annual performance evaluation for the School.</p> <p>(e) Annual performance report.</p> <p>(1) The Governing Board of the School shall publish an annual report describing the educational performance of the School. The report shall include the School's performance objectives and progress toward these objectives. Supplemental information to be included in the report shall be determined by the School's Governing Board.</p> <p>(2) The Governing Board of the School will disseminate the annual performance report to parents of enrolled students, districts that have placed students at the School, and regional education service centers (RESCs). Additionally, the Governing Board will notify the parents of enrolled students, districts that have placed students at the School, and RESCs of an opportunity for public discussion of the annual performance report at a regularly scheduled board meeting. The School's planning and decision-making committee will hold at least one public meeting annually for the purpose of discussing the School's performance report.</p> <p>(3) By December 1, the School shall disseminate the annual performance report.</p> <p>(f) Reporting of data.</p> <p>(1) The School will report PEIMS data according to the following schedule.</p> <p>(A) The Agency and the School shall jointly develop separate action plans for the possible collection of organization, student, staff, and financial data. The action plan for organization and student data shall be completed by June 1998; for staff data by June 1999; and for financial data by June 2000.</p> <p>(B) The Agency and the School shall conduct studies to determine the feasibility of collecting data for each information category according to the following schedule: organization and student data during the 1998-1999 school year; staff data during the 1999-2000 school year; and financial data during the 2000-2001 school year.</p> <p>(C) In each information category for which it is determined that data collection is feasible, the Agency and the School shall pilot the collection as follows: organization and student data during the 1999-2000 school year; staff data during the 2000-2001 school year; and financial data during the 2001-2002 school year.</p> <p>(D) Initial PEIMS collection shall be contingent on resolution of feasibility issues and modifications indicated by the pilot process.</p>	
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	<p>(2) To the extent possible, the Agency shall assist the School in accessing available resources to implement this section of the MOU.</p> <p>(g) Dispute resolution. Disputes between the School and the Agency concerning implementation of this MOU shall be resolved as follows.</p> <p>(1) Staff of the School and the Agency shall identify and attempt to resolve the specific issues involved in the dispute.</p> <p>(2) If staff of the School and the Agency are unable to resolve the dispute after a reasonable time period, the executive officers of the School and the Agency shall assist the staff in identifying a mutually agreeable resolution to the dispute.</p> <p>(3) If the executive officers (or either of them) are unable to reach a mutually agreeable resolution, the School and the Agency shall pursue resolution through the use of mediation pursuant to the Governmental Dispute Resolution Act, Government Code, Chapter 2008. The mediator shall make such arrangements and decisions respecting the conduct of the proceedings as needed in the sole discretion of the mediator. The costs of mediation shall be borne equally by the School and the Agency.</p> <p>(4) If the School and the Agency fail to reach agreement through mediation pursuant to the Governmental Dispute Resolution Act, Government Code, Chapter 2008, the following procedure shall be followed.</p> <p>(A) The School and the Agency shall each select one impartial third party pursuant to Government Code, §2008.053.</p> <p>(B) The impartial third parties selected by the School and the Agency shall jointly select another impartial third party, who must be a person eligible to serve as impartial third party pursuant to Government Code, §2008.053. The person selected shall be the arbitrator of the dispute.</p> <p>(C) The arbitrator selected by the impartial third parties selected by the School and the Agency shall arbitrate the dispute pursuant to Texas Civil Practice and Remedies Code, §154.027. The arbitrator shall make such arrangements and decisions respecting the conduct of the proceedings as needed in the sole discretion of the arbitrator. The costs of arbitration shall be borne equally by the School and the Agency. The parties hereby stipulate in advance that the decision of the arbitrator shall be binding and enforceable against both parties pursuant to Texas Civil Practice and Remedies Code, §154.027(b).</p> <p>(h) Other terms.</p>	
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	<p>(1) This MOU shall be signed by the executive officers of the School and the Agency and shall be effective September 1, 1998.</p> <p>(2) This MOU may be considered for expansion, modification, or amendment upon mutual agreement of the executive officers of the School and the Agency.</p> <p>(3) In the event that federal and/or state laws should be amended, federally interpreted, or judicially interpreted so as to render continued implementation of this MOU unreasonable or impossible, the School and the Agency may agree to amend or terminate this MOU.</p> <p>Last Amended: September 1, 1998, 24 TexReg 7781</p> <p>§ 97.1072. Residential Facility Monitoring; Determinations, Investigations, and Sanctions. [Excerpt]</p> <p>(a) Students with disabilities residing in residential facilities (RFs) are a unique and vulnerable population that often has limited access to family members who can advocate for their educational needs. Accordingly, the commissioner of education hereby establishes the Residential Facility Monitoring (RFM) system, through which the Texas Education Agency (TEA) will meet its federal and state special education monitoring obligations under 34 Code of Federal Regulations §300.149 and §300.600 and Texas Education Code (TEC), §29.010, for this population. The definition of an RF for purposes of the RFM system will be included in the Residential Facility Monitoring (RFM) Manual provided in subsection (f) of this section. Districts serving students with disabilities residing in RFs located within the districts' geographic boundaries and/or jurisdictions will be subject to the RFM system. These districts are referred to as RF districts.</p> <p>(b) RF districts shall report data, as directed by the TEA, in a data collection system accessible through the TEA secure website.</p> <p>(c) The commissioner shall determine which RF districts will be subject to RFM activities based on a review of available information according to the following general criteria or other factors set forth in the Residential Facility Monitoring (RFM) Manual:</p> <ol style="list-style-type: none"> (1) the degree to which the district's data reflect a need for monitoring and intervention, as indicated by the number of RF students with disabilities enrolled in the district; the presence of new RFs within the district; and the district's performance on certain critical indicators related to compliance with special education program requirements; (2) a comparison of the district's performance to aggregated state performance and to the performance of other districts; (3) a review of the district's longitudinal performance; (4) the availability of state and regional resources to intervene in all districts exhibiting a comparable need for intervention; and 	
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<p>§ 300.601 State performance plans and data collection.</p> <p>(a) <i>General.</i> Not later than December 3, 2005, each State must have in place a performance plan that evaluates the State's efforts to implement the requirements and purposes of Part B of the Act, and describes how the State will improve such implementation.</p> <p>(1) Each State must submit the State's performance plan to the Secretary for approval in accordance with the approval process described in section 616(c) of the Act.</p> <p>(2) Each State must review its State performance plan at least once every six years, and submit any amendments to the Secretary.</p> <p>(3) As part of the State performance plan, each State must establish measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in §300.600(d).</p> <p>(b) <i>Data collection.</i></p> <p>(1) Each State must collect valid and reliable information as needed to report annually to the Secretary on the indicators established by the Secretary for the State performance plans.</p>	<p>(5) the length of time since the district was last subject to RFM activities.</p> <p>(d) In addition to the criteria under subsection (c) of this section, the commissioner may use random district selection as a method of system validation and/or may consider any other applicable information such as:</p> <p>(1) complaints investigation results;</p> <p>(2) special education due process hearing decisions;</p> <p>(3) data validation activities;</p> <p>(4) monitoring results under §97.1071 of this title (relating to Special Program Performance; Intervention Stages);</p> <p>(5) the degree to which the district has achieved timely correction of previously identified noncompliance with program requirements;</p> <p>(6) longitudinal intervention history; and</p> <p>(7) other relevant factors.</p> <p>...</p> <p>(i) As a system safeguard, the TEA will conduct desk review or on-site verification activities through random or other means of selection to verify system effectiveness and/or district implementation of RFM requirements, including, but not limited to, accuracy of data reported through the data collection system accessible through the TEA secure website and other data reporting, timely and sufficient implementation of monitoring and intervention activities, implementation of corrective action plans, and continued district compliance after completion of a corrective action plan.</p> <p>Last Amended: February 5, 2015, 40 TexReg 437</p>	
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<p>(2) If the Secretary permits States to collect data on specific indicators through State monitoring or sampling, and the State collects the data through State monitoring or sampling, the State must collect data on those indicators for each LEA at least once during the period of the State performance plan.</p> <p>(3) Nothing in Part B of the Act shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part B of the Act.</p> <p>(Authority: 20 U.S.C. 1416(b)) Last Amended: 71 FR 46800, Aug. 14, 2006</p> <p>§ 300.602 State use of targets and reporting.</p> <p>(a) <i>General.</i> Each State must use the targets established in the State's performance plan under §300.601 and the priority areas described in §300.600(d) to analyze the performance of each LEA.</p> <p>(b) <i>Public reporting and privacy—</i></p> <p>(1) <i>Public report.</i></p> <p>(i) Subject to paragraph (b)(1)(ii) of this section, the State must—</p> <p>(A) Report annually to the public on the performance of each LEA located in the State on the targets in the State's performance plan as soon as practicable but no later than 120 days following the State's submission of its annual performance report to the Secretary under paragraph (b)(2) of this section; and</p> <p>(B) Make each of the following items available through public means: the State's performance plan, under §300.601(a); annual performance reports, under paragraph (b)(2) of this section; and the State's annual reports on the performance of each LEA located in the State, under paragraph (b)(1)(i)(A) of this section. In doing so, the State must, at a minimum, post the plan and reports on the SEA's Web site, and distribute the plan and reports to the media and through public agencies.</p> <p>(ii) If the State, in meeting the requirements of paragraph (b)(1)(i) of this section, collects performance data through State monitoring or sampling, the State must include in its report under paragraph (b)(1)(i)(A) of this section the most recently available performance data on each LEA, and the date the data were obtained.</p> <p>(2) <i>State performance report.</i> The State must report annually to the Secretary on the performance of the State under the State's performance plan.</p>		<p>§ 39.301. Additional Performance Indicators: Reporting. [Excerpt]</p> <p>...</p> <p>(c) Indicators for reporting purposes must include:</p> <p>...</p> <p>(7) the percentage of students in a special education program under Subchapter A, Chapter 29, assessed through assessment instruments developed or adopted under Section 39.023(b);</p> <p>...</p> <p>Last Amended: 85th Leg., R.S., Ch. 807 (H.B. 22), Sec. 18, eff. June 15, 2017 85th Leg., R.S., Ch. 189 (S.B. 22), Sec. 3, eff. June 15, 2017</p>
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<p>(3) <i>Privacy.</i> The State must not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children, or where the available data are insufficient to yield statistically reliable information.</p> <p>(Authority: 20 U.S.C. 1416(b)(2)(C)) Last Amended: 73 FR 73027, Dec. 1, 2008</p> <p>§ 300.603 Secretary's review and determination regarding State performance.</p> <p>(a) <i>Review.</i> The Secretary annually reviews the State's performance report submitted pursuant to §300.602(b)(2).</p> <p>(b) <i>Determination—</i></p> <p>(1) <i>General.</i> Based on the information provided by the State in the State's annual performance report, information obtained through monitoring visits, and any other public information made available, the Secretary determines if the State—</p> <ul style="list-style-type: none"> (i) Meets the requirements and purposes of Part B of the Act; (ii) Needs assistance in implementing the requirements of Part B of the Act; (iii) Needs intervention in implementing the requirements of Part B of the Act; or (iv) Needs substantial intervention in implementing the requirements of Part B of the Act. <p>(2) <i>Notice and opportunity for a hearing.</i></p> <ul style="list-style-type: none"> (i) For determinations made under paragraphs (b)(1)(iii) and (b)(1)(iv) of this section, the Secretary provides reasonable notice and an opportunity for a hearing on those determinations. (ii) The hearing described in paragraph (b)(2) of this section consists of an opportunity to meet with the Assistant Secretary for Special Education and Rehabilitative Services to demonstrate why the Department should not make the determination described in paragraph (b)(1) of this section. <p>(Authority: 20 U.S.C. 1416(d)) Last Amended: 71 FR 46801, Aug. 14, 2006</p> <p>§ 300.604 Enforcement.</p> <p>(a) <i>Needs assistance.</i> If the Secretary determines, for two consecutive years, that a State needs assistance under §300.603(b)(1)(ii) in implementing the requirements of Part B of the Act, the Secretary takes one or more of the following actions:</p> <ul style="list-style-type: none"> (1) Advises the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include 		
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<p>assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and requires the State to work with appropriate entities. Such technical assistance may include—</p> <ul style="list-style-type: none"> (i) The provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the area for concern within a specified period of time; (ii) Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research; (iii) Designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and (iv) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under Part D of the Act, and private providers of scientifically based technical assistance. <p>(2) Directs the use of State-level funds under section 611(e) of the Act on the area or areas in which the State needs assistance.</p> <p>(3) Identifies the State as a high-risk grantee and imposes special conditions on the State's grant under Part B of the Act.</p> <p>(b) <i>Needs intervention.</i> If the Secretary determines, for three or more consecutive years, that a State needs intervention under §300.603(b)(1)(iii) in implementing the requirements of Part B of the Act, the following shall apply:</p> <ul style="list-style-type: none"> (1) The Secretary may take any of the actions described in paragraph (a) of this section. (2) The Secretary takes one or more of the following actions: <ul style="list-style-type: none"> (i) Requires the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within one year. (ii) Requires the State to enter into a compliance agreement under section 457 of the General Education Provisions Act, as amended, 20 U.S.C. 1221 <i>et seq.</i> (GEPA), if the Secretary has reason to believe that the State cannot correct the problem within one year. (iii) For each year of the determination, withholds not less than 20 percent and not more than 50 percent of the State's funds under section 611(e) of the Act, 		
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<p>until the Secretary determines the State has sufficiently addressed the areas in which the State needs intervention.</p> <ul style="list-style-type: none"> (iv) Seeks to recover funds under section 452 of GEPA. (v) Withholds, in whole or in part, any further payments to the State under Part B of the Act. (vi) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice. <p>(c) <i>Needs substantial intervention.</i> Notwithstanding paragraph (a) or (b) of this section, at any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of Part B of the Act or that there is a substantial failure to comply with any condition of an SEA's or LEA's eligibility under Part B of the Act, the Secretary takes one or more of the following actions:</p> <ul style="list-style-type: none"> (1) Recovers funds under section 452 of GEPA. (2) Withholds, in whole or in part, any further payments to the State under Part B of the Act. (3) Refers the case to the Office of the Inspector General at the Department of Education. (4) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice. <p>(d) <i>Report to Congress.</i> The Secretary reports to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 30 days of taking enforcement action pursuant to paragraph (a), (b), or (c) of this section, on the specific action taken and the reasons why enforcement action was taken.</p> <p>(Authority: 20 U.S.C. 1416(e)(1)–(e)(3), (e)(5)) Last Amended: 71 FR 46801, Aug. 14, 2006</p> <p>§ 300.605 Withholding funds.</p> <ul style="list-style-type: none"> (a) <i>Opportunity for hearing.</i> Prior to withholding any funds under Part B of the Act, the Secretary provides reasonable notice and an opportunity for a hearing to the SEA involved, pursuant to the procedures in §§300.180 through 300.183. (b) <i>Suspension.</i> Pending the outcome of any hearing to withhold payments under paragraph (a) of this section, the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under Part B of the Act, or both, after the recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under Part B of the Act should not be suspended. (c) <i>Nature of withholding.</i> <ul style="list-style-type: none"> (1) If the Secretary determines that it is appropriate to withhold further payments under §300.604(b)(2) or (c)(2), the Secretary may determine— <ul style="list-style-type: none"> (i) That the withholding will be limited to programs or 		
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<p>projects, or portions of programs or projects, that affected the Secretary's determination under §300.603(b)(1); or</p> <ul style="list-style-type: none"> (ii) That the SEA must not make further payments under Part B of the Act to specified State agencies or LEAs that caused or were involved in the Secretary's determination under §300.603(b)(1). <p>(2) Until the Secretary is satisfied that the condition that caused the initial withholding has been substantially rectified—</p> <ul style="list-style-type: none"> (i) Payments to the State under Part B of the Act must be withheld in whole or in part; and (ii) Payments by the SEA under Part B of the Act must be limited to State agencies and LEAs whose actions did not cause or were not involved in the Secretary's determination under §300.603(b)(1), as the case may be. <p>(Authority: 20 U.S.C. 1416(e)(4), (e)(6)) Last Amended: 71 FR 46802, Aug. 14, 2006</p> <p>§ 300.606 Public attention.</p> <p>Whenever a State receives notice that the Secretary is proposing to take or is taking an enforcement action pursuant to §300.604, the State must, by means of a public notice, take such actions as may be necessary to notify the public within the State of the pendency of an action pursuant to §300.604, including, at a minimum, by posting the notice on the SEA's Web site and distributing the notice to the media and through public agencies.</p> <p>(Authority: 20 U.S.C. 1416(e)(7)) Last Amended: 73 FR 73028, Dec. 1, 2008</p> <p>§ 300.607 Divided State agency responsibility.</p> <p>For purposes of this subpart, if responsibility for ensuring that the requirements of Part B of the Act are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the SEA pursuant to §300.149(d), and if the Secretary finds that the failure to comply substantially with the provisions of Part B of the Act are related to a failure by the public agency, the Secretary takes appropriate corrective action to ensure compliance with Part B of the Act, except that—</p> <ul style="list-style-type: none"> (a) Any reduction or withholding of payments to the State under §300.604 must be proportionate to the total funds allotted under section 611 of the Act to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the SEA; and (b) Any withholding of funds under §300.604 must be limited to the specific agency responsible for the failure to comply with Part B of the Act. 		
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(Authority: 20 U.S.C. 1416(h))
 Last Amended: 71 FR 46802, Aug. 14, 2006

§ 300.608 State enforcement.

(a) If an SEA determines that an LEA is not meeting the requirements of Part B of the Act, including the targets in the State's performance plan, the SEA must prohibit the LEA from reducing the LEA's maintenance of effort under §300.203 for any fiscal year.

(b) Nothing in this subpart shall be construed to restrict a State from utilizing any other authority available to it to monitor and enforce the requirements of Part B of the Act.

(Authority: 20 U.S.C. 1416(f); 20 U.S.C. 1412(a)(11))
 Last Amended: 71 FR 46802, Aug. 14, 2006

§ 300.609 Rule of construction.

Nothing in this subpart shall be construed to restrict the Secretary from utilizing any authority under GEPA, including the provisions in 34 CFR parts 76, 77, and 81 and 2 CFR part 200 to monitor and enforce the requirements of the Act, including the imposition of special or high-risk conditions under 2 CFR 200.207 and 3474.10.

(Authority: 20 U.S.C. 1416(g))
 Last Amended: 79 FR 76097, Dec. 19, 2014

Confidentiality of Information

§ 300.610 Confidentiality.

The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by SEAs and LEAs pursuant to Part B of the Act, and consistent with §§300.611 through 300.627.

(Authority: 20 U.S.C. 1417(c))
 Last Amended: 71 FR 46802, Aug. 14, 2006

§ 300.611 Definitions.

As used in §§300.611 through 300.625—

(a) *Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

(b) *Education records* means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).

(c) *Participating agency* means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act.

§ 89.1075. General Program Requirements and Local District Procedures. [Excerpt]

(a) Each school district must maintain an eligibility folder for each student receiving special education services, in addition to the student's cumulative record. The eligibility folder must include, but need not be limited to: copies of referral data; documentation of notices and consents; evaluation reports and supporting data; admission, review, and dismissal (ARD) committee reports; and the student's individualized education programs (IEPs).

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Last Amended: January 1, 2015, 39 TexReg 10446

§ 28.058. Confidentiality.

All information regarding an individual student received by the commissioner under this subchapter from a school district or student is confidential under Chapter 552, Government Code.

Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995

§ 26.004. Access to Student Records.

(a) In this section, "intervention strategy" means a strategy in a multi-tiered system of supports that is above the level of intervention generally used in that system with all children. The term includes response to intervention and other early intervening strategies.

(b) A parent is entitled to access to all written records of a school district concerning the parent's child, including:

- (1) attendance records;
- (2) test scores;
- (3) grades;

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(Authority: 20 U.S.C. 1221e-3, 1412(a)(8), 1417(c))
Last Amended: 71 FR 46802, Aug. 14, 2006

§ 300.612 Notice to parents.

- (a) The SEA must give notice that is adequate to fully inform parents about the requirements of §300.123, including—
 - (1) A description of the extent that the notice is given in the native languages of the various population groups in the State;
 - (2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
 - (3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
 - (4) A description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR part 99.
- (b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))
Last Amended: 71 FR 46802, Aug. 14, 2006

§ 300.613 Access rights.

- (a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to §300.507 or §§300.530 through 300.532, or resolution session pursuant to §300.510, and in no case more than 45 days after the request has been made.
- (b) The right to inspect and review education records under this

- (4) disciplinary records;
- (5) counseling records;
- (6) psychological records;
- (7) applications for admission;
- (8) health and immunization information;
- (9) teacher and school counselor evaluations;
- (10) reports of behavioral patterns; and
- (11) records relating to assistance provided for learning difficulties, including information collected regarding any intervention strategies used with the child.

Last Amended: 85th Leg., R.S., Ch. 735 (S.B. 1153), Sec. 2, eff. June 12, 2017

§ 26.004. Access to Student Records.

- (a) In this section, "intervention strategy" means a strategy in a multi-tiered system of supports that is above the level of intervention generally used in that system with all children. The term includes response to intervention and other early intervening strategies.
- (b) A parent is entitled to access to all written records of a school district concerning the parent's child, including:
 - (1) attendance records;

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section includes—

- (1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;
- (2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
- (3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))
Last Amended: 71 FR 46803, Aug. 14, 2006

§ 300.614 Record of access.

Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))
Last Amended: 71 FR 46803, Aug. 14, 2006

§ 300.615 Records on more than one child.

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))
Last Amended: 71 FR 46803, Aug. 14, 2006

- (2) test scores;
- (3) grades;
- (4) disciplinary records;
- (5) counseling records;
- (6) psychological records;
- (7) applications for admission;
- (8) health and immunization information;
- (9) teacher and school counselor evaluations;
- (10) reports of behavioral patterns; and
- (11) records relating to assistance provided for learning difficulties, including information collected regarding any intervention strategies used with the child.

Last Amended: 85th Leg., R.S., Ch. 735 (S.B. 1153), Sec. 2, eff. June 12, 2017

§ 37.0091. Notice to Noncustodial Parent.

- (a) A noncustodial parent may request in writing that a school district or school, for the remainder of the school year in which the request is received, provide that parent with a copy of any written notification relating to student misconduct under Section 37.006 or 37.007 that is generally provided by the district or school to a student's parent or guardian.
- (b) A school district or school may not unreasonably deny a request authorized by Subsection (a).
- (c) Notwithstanding any other provision of this section, a school district or school shall comply with any applicable court order of which the district or school has knowledge.

Last Amended: 78th Leg., ch. 1055, Sec. 14, eff. June 20, 2003

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§ 300.616 List of types and locations of information.

Each participating agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

Last Amended: 71 FR 46803, Aug. 14, 2006

§ 300.617 Fees.

- (a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.
- (b) A participating agency may not charge a fee to search for or to retrieve information under this part.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

Last Amended: 71 FR 46803, Aug. 14, 2006

§ 300.618 Amendment of records at parent's request.

- (a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.
- (b) The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.
- (c) If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under §300.619.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

Last Amended: 71 FR 46803, Aug. 14, 2006

§ 300.619 Opportunity for a hearing.

The agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

Last Amended: 71 FR 46803, Aug. 14, 2006

§ 300.620 Result of hearing.

- (a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing.

§ 26.012. Fee for Copies.

The agency or a school district may charge a reasonable fee in accordance with Subchapter F, Chapter 552, Government Code, for copies of materials provided to a parent under this chapter.

Last Amended: 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995

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- (b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the parent's right to place in the records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.
- (c) Any explanation placed in the records of the child under this section must—
 - (1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and
 - (2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))
 Last Amended: 71 FR 46803, Aug. 14, 2006

§ 300.621 Hearing procedures.

A hearing held under § 300.619 must be conducted according to the procedures in 34 CFR 99.22.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))
 Last Amended: 71 FR 46803, Aug. 14, 2006

§ 300.622 Consent.

- (a) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with paragraph (b)(1) of this section, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR part 99.
- (b)
 - (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part.
 - (2) Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with §300.321(b)(3).
 - (3) If a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and officials in the LEA of the parent's residence.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§ 26.013. Student Directory Information.

- (a) A school district shall provide to the parent of each district student at the beginning of each school year or on enrollment of the student after the beginning of a school year:
 - (1) a written explanation of the provisions of the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), regarding the release of directory information about the student; and
 - (2) written notice of the right of the parent to object to the release of directory information about the student under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).
- (b) The notice required by Subsection (a)(2) must contain:
 - (1) the following statement in boldface type that is 14-point or larger:

"Certain information about district students is considered directory information and will be released to anyone who follows the procedures for requesting the information unless the parent or guardian objects to the release of the directory information about the student. If you do not want [insert name of school district] to disclose directory information from your child's education records without your prior written consent, you must notify the district in writing by [insert date]. [Insert name of school district] has designated the following information as directory information: [Here a school district must include any

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<p>Last Amended: 71 FR 46803, Aug. 14, 2006</p>		<p>directory information it chooses to designate as directory information for the district, such as a student's name, address, telephone listing, electronic mail address, photograph, degrees, honors and awards received, date and place of birth, major field of study, dates of attendance, grade level, most recent educational institution attended, and participation in officially recognized activities and sports, and the weight and height of members of athletic teams.]"</p> <p>(2) a form, such as a check-off list or similar mechanism, that:</p> <p>(A) immediately follows, on the same page or the next page, the statement required under Subdivision (1); and</p> <p>(B) allows a parent to record:</p> <p>(i) the parent's objection to the release of all directory information or one or more specific categories of directory information if district policy permits the parent to object to one or more specific categories of directory information;</p> <p>(ii) the parent's objection to the release of a secondary student's name, address, and telephone number to a military recruiter or institution of higher education; and</p> <p>(iii) the parent's consent to the release of one or more specific categories of directory information for a limited school-sponsored purpose if such purpose has been designated by the district and is specifically identified, such as for a student directory, student yearbook, or district publication; and</p> <p>(3) a statement that federal law requires districts receiving assistance under the Elementary and Secondary Education Act of 1965 (20 U.S.C. Section 6301 et seq.) to provide a military recruiter or an institution of higher education, on request, with the name, address, and telephone number of a secondary student unless the parent has advised the district that the parent does not want the student's information disclosed without the parent's prior written consent.</p> <p>(c) A school district may designate as directory information any or all information defined as directory information by the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g). Directory information under that Act that is not designated by a district as directory information for that district is excepted from disclosure by the district under Chapter 552, Government Code.</p> <p>(d) Directory information consented to by a parent for use only for a limited school-sponsored purpose, such as for a student directory, student yearbook, or school district publication, if any such purpose has been designated by the district, remains otherwise confidential and may not be released under Chapter 552, Government Code.</p>
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<p>§ 300.623 Safeguards.</p> <ul style="list-style-type: none"> (a) Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. (b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information. (c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §300.123 and 34 CFR part 99. (d) Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information. <p>(Authority: 20 U.S.C. 1412(a)(8); 1417(c)) Last Amended: 71 FR 46803, Aug. 14, 2006</p> <p>§ 300.624 Destruction of information.</p> <ul style="list-style-type: none"> (a) The public agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child. (b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation. <p>(Authority: 20 U.S.C. 1412(a)(8); 1417(c)) Last Amended: 71 FR 46804, Aug. 14, 2006</p> <p>§ 300.625 Children's rights.</p> <ul style="list-style-type: none"> (a) The SEA must have in effect policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability. (b) Under the regulations for FERPA in 34 CFR 99.5(a), the rights of parents regarding education records are transferred to the student at age 18. (c) If the rights accorded to parents under Part B of the Act are transferred to a student who reaches the age of majority, consistent with §300.520, the rights regarding educational records in §§300.613 through 300.624 must also be transferred to the student. However, the public agency must provide any notice required under section 615 of the Act to the 		<p>Last Amended: 79th Leg., Ch. 687 (S.B. 256), Sec. 1, eff. June 17, 2005</p>
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<p>student and the parents. (Authority: 20 U.S.C. 1412(a)(8); 1417(c)) Last Amended: 71 FR 46804, Aug. 14, 2006</p> <p>§ 300.626 Enforcement. The SEA must have in effect the policies and procedures, including sanctions that the State uses, to ensure that its policies and procedures consistent with §§300.611 through 300.625 are followed and that the requirements of the Act and the regulations in this part are met. (Authority: 20 U.S.C. 1412(a)(8); 1417(c)) Last Amended: 71 FR 46804, Aug. 14, 2006</p>	<p>§ 89.1076. Interventions and Sanctions. The Texas Education Agency (TEA) must establish and implement a system of interventions and sanctions, in accordance with the Individuals with Disabilities Education Act, 20 United States Code, §§1400 et seq., Texas Education Code (TEC), §29.010, and TEC, Chapter 39, as necessary to ensure program effectiveness and compliance with federal and state requirements regarding the implementation of special education and related services. In accordance with TEC, §39.102, the TEA may combine any intervention and sanction. The system of interventions and sanctions will include, but not be limited to, the following:</p> <ol style="list-style-type: none"> (1) on-site review for failure to meet program or compliance requirements; (2) required fiscal audit of specific programs and/or of the district, paid for by the district; (3) required submission of corrective actions, including compensatory services, paid for by the district; (4) required technical assistance, paid for by the district; (5) public release of program or compliance review findings; (6) special investigation and/or follow-up verification visits; (7) required public hearing conducted by the local school board of trustees; (8) assignment of a special purpose monitor, conservator, or management team, paid for by the district; (9) hearing before the commissioner of education or designee; (10) reduction in payment or withholding of funds; (11) lowering of the special education monitoring/compliance status and/or the accreditation rating of the district; and/or (12) other authorized interventions and sanctions as determined by the commissioner. <p>Last Amended: January 1, 2015, 39 TexReg 10446</p> <p>§ 97.1059. Standards for All Accreditation Sanction Determinations. [Excerpt]</p> <ol style="list-style-type: none"> (a) The commissioner of education shall impose district and campus accreditation sanctions under this subchapter individually or in combination as the commissioner determines necessary to achieve the purposes identified in §97.1053 of this title (relating to Purpose). (b) In making a determination under subsection (a) of this section, the commissioner shall consider the seriousness, number, extent, and duration of deficiencies identified by the Texas Education Agency (TEA), and shall impose one or more accreditation sanctions on a district and its campuses as needed to address: 	<p>§ 29.010. Compliance. [Excerpt] . . .</p> <ol style="list-style-type: none"> (c) The agency shall develop and implement a system of sanctions for school districts whose most recent monitoring visit shows a failure to comply with major requirements of the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.), federal regulations, state statutes, or agency requirements necessary to carry out federal law or regulations or state law relating to special education. (d) For districts that remain in noncompliance for more than one year, the first stage of sanctions shall begin with annual or more frequent monitoring visits. Subsequent sanctions may range in severity up to the withholding of funds. If funds are withheld, the agency may use the funds to provide, through alternative arrangements, services to students and staff members in the district from which the funds are withheld. <p>. . . Last Amended: 76th Leg., ch. 1417, Sec. 1, eff. June 19, 1999</p>
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	<p>(1) each material deficiency identified by the TEA through its systems for district and campus accountability, including:</p> <p>...</p> <p>(D) program effectiveness under §97.1071 of this title (relating to Special Program Performance; Intervention Stages) or other law;</p> <p>(E) the results of a special accreditation investigation under Texas Education Code, §39.057;</p> <p>(F) the results of an investigative report under Chapter 157, Subchapter EE, of this title (relating to Informal Review, Formal Review, and Review by State Office of Administrative Hearings); complaint investigation; special education due process hearing; or data integrity investigation, including an investigation of assessment or financial data; or</p> <p>...</p> <p>Last Amended: February 5, 2015, 40 TexReg 437</p> <p>§ 97.1063. Campus Intervention Team. [Excerpt]</p> <p>(a) If the performance of a campus is below any standard under Texas Education Code (TEC), §39.054(e), for the current school year, the commissioner of education shall assign a campus intervention team (CIT) under TEC, §39.106, and this section. The duties and responsibilities of the CIT will be based on the reasons for the campus' academic accountability rating.</p> <p>(1) In assigning a CIT to a campus below a standard under TEC, §39.054(e), for the first year, the commissioner will offer the school district an opportunity to recommend CIT members under procedures established by the Texas Education Agency (TEA).</p> <p>(A) If the district does not recommend CIT members under TEA procedures, the commissioner will assign a CIT without such input.</p> <p>(B) If the commissioner does not approve the CIT membership recommendation by the district, the commissioner will assign the CIT members.</p> <p>(2) In assigning a CIT to a campus below a standard under TEC, §39.054(e), for the second or more consecutive year, the commissioner will approve CIT members only as provided by procedures established by the TEA.</p> <p>(3) If the campus does not implement the school improvement plan (SIP) or the recommendations of the CIT, the commissioner shall order the reconstitution of the campus in accordance with TEC, §39.107, and §97.1064 of this title (relating to Reconstitution).</p> <p>...</p> <p>(h) In assisting the district/campus to execute its approved SIP, the CIT will, as appropriate:</p> <p>(1) assist the campus in implementing research-based practices for curriculum development and classroom</p>	
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	<p>instruction, including bilingual education and special education programs and financial management;</p> <p>...</p> <p>Last Amended: July 28, 2010, 35 TexReg 6523</p> <p>§ 97.1071. Special Program Performance; Intervention Stages.</p> <p>(a) The commissioner of education shall assign a school district to an intervention stage based on performance levels under §97.1005 of this title (relating to Performance-Based Monitoring Analysis System) according to the following general criteria:</p> <ol style="list-style-type: none"> (1) the degree to which the district's performance reflects a need for intervention, as indicated by the seriousness, number, extent, and duration of the student performance, program effectiveness, and/or program compliance deficiencies identified by the Texas Education Agency (TEA); (2) a comparison of the district's performance to aggregated state performance and to the performance of other districts; (3) the availability of state and regional resources to intervene in all districts exhibiting a comparable need for intervention; and (4) the length of time the performance standard has been in place and the length of time the district has exhibited deficiencies under the standard. <p>(b) In addition to performance levels determined under §97.1005 of this title, the commissioner may consider any other applicable information, such as:</p> <ol style="list-style-type: none"> (1) complaints investigation results; (2) special education due process hearing decisions; (3) data validation activities; (4) integrity of assessment or financial data; and (5) longitudinal intervention history. <p>(c) The standards used to assign districts to specific intervention stages under this section are established annually by the commissioner and communicated to all school districts.</p> <p>(d) The commissioner may use graduated stages of intervention to address student performance, program effectiveness, and/or data quality deficiencies referenced in §97.1005 of this title. In addition to any sanction authorized by Texas Education Code (TEC), Chapter 39, such intervention may require a district to implement and/or participate in:</p> <ol style="list-style-type: none"> (1) focused analysis of district data; (2) required district review of program effectiveness; (3) required public meetings; (4) focused compliance reviews conducted by review teams established by the TEA; (5) on-site reviews; and/or 	
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	<ul style="list-style-type: none"> (6) continuous improvement planning. (e) The commissioner shall notify each district selected for intervention under this section via the Intervention Stage and Activity Manager (ISAM) on the TEA secure website. <ul style="list-style-type: none"> (1) The TEA shall notify districts that intervention stages have been posted to ISAM by: <ul style="list-style-type: none"> (A) posting a "To the Administrator Addressed" letter on the TEA web page for correspondence; or (B) sending a "To the Administrator Addressed" letter via electronic mail or first-class mail. (2) It is the district's obligation to access the correspondence by: <ul style="list-style-type: none"> (A) subscribing to the listserv for "To the Administrator Addressed Correspondence;" and (B) accessing the ISAM system as directed to retrieve intervention instructions and information. (f) Intervention actions taken under this section are intended to assist the district in raising its performance and/or achieving compliance under §97.1005 of this title and do not preclude or substitute for a sanction under another provision of this subchapter. <ul style="list-style-type: none"> (1) The level of intervention selected under this section does not reflect any decision on, or consideration of, the need for other sanctions. (2) A decision to impose other sanctions shall be based on the accreditation and compliance performance of the district, as determined under §97.1057 of this title (relating to Interventions and Sanctions; Lowered Rating or Accreditation Status) and this subchapter, and not on the level of intervention chosen under this section. (g) Intervention actions taken under this section do not preclude or substitute for other responses to or consequences of program ineffectiveness or noncompliance identified by the TEA, such as: <ul style="list-style-type: none"> (1) required fiscal audit of specific program(s) and/or of the district, paid for by the district; (2) required submission of improvement and/or corrective action plan(s), including the provision of compensatory services as appropriate, paid for by the district; (3) expanded oversight including, but not limited to, frequent follow-up contacts with the district, submission of documentation verifying implementation of intervention activities and/or an improvement plan; and submission of district/program data; (4) public release of monitoring review findings; (5) denial of requests under TEC, §7.056 and/or §12.114; (6) reduction, suspension, redirection, or withholding of program funds; (7) lowering of the special education monitoring status of the district; and/or 	
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	<p>(8) lowering of the district's accreditation status, academic accountability rating, and/or financial accountability rating.</p> <p>(h) As a system safeguard, the TEA will conduct desk review or on-site data verification activities through a random or other means of selection to verify system effectiveness and/or district implementation of monitoring requirements, including, but not limited to, accuracy of data reporting, implementation of intervention activities, implementation of plans for improvement or correction, and accuracy of findings made through the performance-based monitoring system process.</p> <p>Last Amended: February 5, 2015, 40 TexReg 437</p> <p>§ 97.1072. Residential Facility Monitoring; Determinations, Investigations, and Sanctions. [Excerpt]</p> <p>...</p> <p>(e) The commissioner may use graduated monitoring and intervention activities to implement the RFM system. In addition to any investigation, intervention, or sanction authorized by TEC, Chapter 39, or §89.1076 of this title (relating to Interventions and Sanctions), such intervention may require an RF district to implement and/or participate in:</p> <ol style="list-style-type: none"> (1) focused analysis of district data; (2) reviews of district program effectiveness; (3) public meetings; (4) focused compliance reviews conducted by review teams established by the TEA; (5) on-site reviews; and/or (6) corrective action planning. <p>(f) The specific criteria, standards, and procedures for implementing the RFM system are described in the Residential Facility Monitoring (RFM) Manual, dated August 2011, provided in this subsection. The specific criteria, standards, and procedures used in the RFM manual adopted for use prior to 2011 remain in effect for all purposes with respect to the applicable period of adoption.</p> <p>Figure: 19 TAC §97.1072(f)</p> <p>(g) RFM activities under this section are intended to assist the RF district in achieving compliance with federal and state special education requirements and do not preclude or substitute for a sanction under another provision of this subchapter.</p> <ol style="list-style-type: none"> (1) The TEA will implement sanctions authorized under TEC, Chapter 39, or this subchapter as necessary to promote timely and complete correction of identified noncompliance. (2) A decision to impose sanctions shall be based on the accreditation and compliance performance of the district, as determined under §89.1076 of this title, §97.1057 of this title (relating to Interventions and Sanctions; Lowered Rating or Accreditation Status), and this subchapter. <p>(h) RFM actions taken under this section do not preclude or</p>	
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<p>§ 300.627 Department use of personally identifiable information.</p> <p>If the Department or its authorized representatives collect any personally identifiable information regarding children with disabilities that is not subject to the Privacy Act of 1974, 5 U.S.C. 552a, the Secretary applies the requirements of 5 U.S.C. 552a(b)(1) and (b)(2), 552a(b)(4) through (b)(11); 552a(c) through 552a(e)(3)(B); 552a(e)(3)(D); 552a(e)(5) through (e)(10); 552a(h); 552a(m); and 552a(n); and the regulations implementing those provisions in 34 CFR part 5b.</p> <p>(Authority: 20 U.S.C. 1412(a)(8); 1417(c)) Last Amended: 71 FR 46804, Aug. 14, 2006</p> <p>Reports—Program Information</p> <p>§ 300.640 Annual report of children served—report requirement.</p> <p>(a) The SEA must annually report to the Secretary on the information required by section 618 of the Act at the times</p>	<p>substitute for other responses to or consequences of program ineffectiveness or noncompliance identified by the TEA such as:</p> <ol style="list-style-type: none"> (1) assignment of required professional services, paid for by the district; (2) required submission of an improvement and/or corrective action plan, including the provision of compensatory services as appropriate, paid for by the district; (3) expanded oversight, including, but not limited to, frequent follow-up contacts with the district, submission of documentation verifying implementation of intervention activities and/or a corrective action plan, and submission of district/program data; (4) public release of RFM review findings; (5) issuance of a public notice of deficiencies and planned corrective actions to the district's board of trustees; (6) denial of requests under TEC, §7.056 and/or §12.114; (7) appointment of a monitor, conservator, management team, or board of managers under TEC, Chapter 39, and/or §97.1073 of this title (relating to Appointment of Monitor, Conservator, or Board of Managers); (8) reduction, suspension, redirection, or withholding of program funds; (9) lowering of the district's special education monitoring status; and/or (10) lowering of the district's accreditation status. <p>...</p> <p>Last Amended: February 5, 2015, 40 TexReg 437</p>	
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specified by the Secretary.

(b) The SEA must submit the report on forms provided by the Secretary.

(Authority: 20 U.S.C. 1418(a))
Last Amended: 71 FR 46804, Aug. 14, 2006

§ 300.641 Annual report of children served—information required in the report.

(a) For purposes of the annual report required by section 618 of the Act and §300.640, the State and the Secretary of the Interior must count and report the number of children with disabilities receiving special education and related services on any date between October 1 and December 1 of each year.

(b) For the purpose of this reporting provision, a child's age is the child's actual age on the date of the child count.

(c) The SEA may not report a child under more than one disability category.

(d) If a child with a disability has more than one disability, the SEA must report that child in accordance with the following procedure:

- (1) If a child has only two disabilities and those disabilities are deafness and blindness, and the child is not reported as having a developmental delay, that child must be reported under the category "deaf-blindness."
- (2) A child who has more than one disability and is not reported as having deaf-blindness or as having a developmental delay must be reported under the category "multiple disabilities."

(Authority: 20 U.S.C. 1418(a), (b))
Last Amended: 71 FR 46804, Aug. 14, 2006

§ 300.642 Data reporting.

(a) *Protection of personally identifiable data.* The data described in section 618(a) of the Act and in §300.641 must be publicly reported by each State in a manner that does not result in disclosure of data identifiable to individual children.

(b) *Sampling.* The Secretary may permit States and the Secretary of the Interior to obtain data in section 618(a) of the Act through sampling.

(Authority: 20 U.S.C. 1418(b))
Last Amended: 71 FR 46804, Aug. 14, 2006

§ 300.643 Annual report of children served—certification.

The SEA must include in its report a certification signed by an authorized official of the agency that the information provided under §300.640 is an accurate and unduplicated count of children with disabilities receiving special education and related services on the dates in question.

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<p>(Authority: 20 U.S.C. 1418(a)(3)) Last Amended: 71 FR 46804, Aug. 14, 2006</p> <p>§ 300.644 Annual report of children served—criteria for counting children.</p> <p>The SEA may include in its report children with disabilities who are enrolled in a school or program that is operated or supported by a public agency, and that—</p> <ul style="list-style-type: none"> (a) Provides them with both special education and related services that meet State standards; (b) Provides them only with special education, if a related service is not required, that meets State standards; or (c) In the case of children with disabilities enrolled by their parents in private schools, counts those children who are eligible under the Act and receive special education or related services or both that meet State standards under §§300.132 through 300.144. <p>(Authority: 20 U.S.C. 1418(a)) Last Amended: 71 FR 46804, Aug. 14, 2006</p> <p>§ 300.645 Annual report of children served—other responsibilities of the SEA.</p> <p>In addition to meeting the other requirements of §§300.640 through 300.644, the SEA must—</p> <ul style="list-style-type: none"> (a) Establish procedures to be used by LEAs and other educational institutions in counting the number of children with disabilities receiving special education and related services; (b) Set dates by which those agencies and institutions must report to the SEA to ensure that the State complies with §300.640(a); (c) Obtain certification from each agency and institution that an unduplicated and accurate count has been made; (d) Aggregate the data from the count obtained from each agency and institution, and prepare the reports required under §§300.640 through 300.644; and (e) Ensure that documentation is maintained that enables the State and the Secretary to audit the accuracy of the count. <p>(Authority: 20 U.S.C. 1418(a)) Last Amended: 71 FR 46804, Aug. 14, 2006</p> <p>§ 300.646 Disproportionality.</p> <ul style="list-style-type: none"> (a) <i>General.</i> Each State that receives assistance under Part B of the Act, and the Secretary of the Interior, must provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State with respect to— <ul style="list-style-type: none"> (1) The identification of children as children with disabilities, including the identification of children as children with 	<p>§ 61.1025. Public Education Information Management System (PEIMS) Data and Reporting Standards.</p> <ul style="list-style-type: none"> (a) Data submissions. The Public Education Information Management System (PEIMS) consists of all data submitted by school districts, charter schools, campuses, and other educational organizations and entities to the Texas Education Agency (TEA). (b) Standards. Data standards, established by the commissioner of education under Texas Education Code (TEC), §42.006, 	<p>§ 42.006. Public Information Management System (PEIMS).</p> <ul style="list-style-type: none"> (a) Each school district shall participate in the Public Education Information Management System (PEIMS) and shall provide through that system information required for the administration of this chapter and of other appropriate provisions of this code. (a-1) The commissioner by rule shall require each school district and open-enrollment charter school to report through the Public Education Information Management System information regarding the number of students enrolled in the district or
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<p>disabilities in accordance with a particular impairment described in section 602(3) of the Act;</p> <p>(2) The placement in particular educational settings of these children; and</p> <p>(3) The incidence, duration, and type of disciplinary removals from placement, including suspensions and expulsions.</p> <p>(b) <i>Methodology.</i> The State must apply the methods in § 300.647 to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State under paragraph (a) of this section.</p> <p>(c) <i>Review and revision of policies, practices, and procedures.</i> In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings, including disciplinary removals of such children, in accordance with paragraphs (a) and (b) of this section, the State or the Secretary of the Interior must—</p> <p>(1) Provide for the annual review and, if appropriate revision of the policies, practices, and procedures used in identification or placement in particular education settings, including disciplinary removals, to ensure that the policies, practices, and procedures comply with the requirements of the Act.</p> <p>(2) Require the LEA to publicly report on the revision of policies, practices, and procedures described under paragraph (c)(1) of this section consistent with the requirements of the Family Educational Rights and Privacy Act, its implementing regulations in 34 CFR part 99, and Section 618(b)(1) of the Act.</p> <p>(d) <i>Comprehensive coordinated early intervening services.</i> Except as provided in paragraph (e) of this section, the State or the Secretary of the Interior shall require any LEA identified under paragraphs (a) and (b) of this section to reserve the maximum amount of funds under section 613(f) of the Act to provide comprehensive coordinated early intervening services address factors contributing to the significant disproportionality.</p> <p>(1) In implementing comprehensive coordinated early intervening services an LEA—</p> <p>(i) May carry out activities that include professional development and educational and behavioral evaluations, services, and supports.</p> <p>(ii) Must identify and address the factors contributing to the significant disproportionality, which may include, among other identified factors, a lack of access to scientifically based instruction; economic, cultural, or linguistic barriers to appropriate identification or placement in particular educational settings; inappropriate use of disciplinary removals; lack of access to appropriate diagnostic screenings; differences in academic achievement levels; and policies, practices, or procedures that contribute to the significant disproportionality.</p>	<p>shall be used by school districts and charter schools to submit information required for the legislature and the TEA to perform their legally authorized functions. Data standards shall be published annually in official TEA publications. These publications shall be widely disseminated and include:</p> <p>(1) descriptions of the data collections and submission requirements;</p> <p>(2) descriptions of data elements and the codes used to report them;</p> <p>(3) detailed responsibilities of school districts, education service centers, and the TEA in connection with the data submission processes, including each deadline for submission and resubmission; and</p> <p>(4) descriptions of the data submission requirements, including submission record layout specifications and data edit specifications.</p> <p>(c) External review process. The commissioner shall establish a policy advisory group that provides oversight of data collections and reporting standards policies. The policy advisory group membership shall be composed of representatives of school districts, charter schools, education service centers, state government, and educational associations. Subcommittees consisting of technical experts and representatives from user groups may be established by the commissioner to provide timely and impartial reviews of requested changes or additions to TEA data collections and reporting standards. The procedure for adding, deleting, or modifying data elements described in paragraphs (1)-(5) of this subsection provides consistency in updates to the data and reporting standards. The commissioner may approve changes to the data and reporting standards outside this process if necessary to expedite implementation of data collections and reporting.</p> <p>(1) Prepare proposal. A written proposal is prepared to add, delete, or modify data elements. The proposal provides justification for the data collection, determination of data availability, and definitions of critical attributes and required analyses of requested data elements.</p> <p>(2) Conduct research. Survey a sampling of districts to update and refine cost estimates, assess district burden, and determine any benefits from a pilot of the data collection.</p> <p>(3) Solicit feedback. The subcommittee(s) established by the commissioner and other appropriate TEA committees review proposals and make formal, written recommendations to the policy advisory group. The policy advisory group reviews proposals and committee recommendations and makes recommendations to the commissioner for approval, modification, or rejection of the proposed changes.</p> <p>(4) Collect data. Data standards and software made available to districts online are updated annually, implementing changes to data submissions</p>	<p>school who are identified as having dyslexia. The agency shall maintain the information provided in accordance with this subsection.</p> <p>Text of subsection as amended by Acts 2017, 85th Leg., R.S., Ch. 550 (S.B. 490), Sec. 3</p> <p>(a-2) The commissioner by rule shall require each school district and open-enrollment charter school to report through the Public Education Information Management System information regarding the availability of school counselors at each campus. The commissioner's rules shall require a district or school to report the number of full-time equivalent school counselors providing counseling services at a campus. For purposes of this subsection, "full-time equivalent school counselor" means 40 hours of counseling services a week. The agency shall maintain the information provided in accordance with this subsection.</p> <p>Text of subsection as amended by Acts 2017, 85th Leg., R.S., Ch. 916 (S.B. 1404), Sec. 1</p> <p>(a-2) The commissioner by rule shall require each school district and open-enrollment charter school to report through the Public Education Information Management System information for each campus of the district or school regarding:</p> <p>(1) the availability of expanded learning opportunities as described by Section 33.252; and</p> <p>(2) the number of students participating in each of the categories of expanded learning opportunities listed under Section 33.252(b).</p> <p>(a-3) The commissioner by rule shall require each school district and open-enrollment charter school to annually report through the Public Education Information Management System information regarding the total number of students, other than students described by Subsection (a-4), enrolled in the district or school with whom the district or school, as applicable, used intervention strategies, as that term is defined by Section 26.004, at any time during the year for which the report is made. The agency shall maintain the information provided in accordance with this subsection.</p> <p>(a-4) The commissioner by rule shall require each school district and open-enrollment charter school to annually report through the Public Education Information Management System information regarding the total number of students enrolled in the district or school to whom the district or school provided aids, accommodations, or services under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), at any time during the year for which the report is made. The agency shall maintain the information provided in accordance with this subsection.</p> <p>(b) Each school district shall use a uniform accounting system adopted by the commissioner for the data required to be reported for the Public Education Information Management System.</p>
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<p>(iii) Must address a policy, practice, or procedure it identifies as contributing to the significant disproportionality, including a policy, practice or procedure that results in a failure to identify, or the inappropriate identification of, a racial or ethnic group (or groups).</p> <p>(2) An LEA may use funds reserved for comprehensive coordinated early intervening services to serve children from age 3 through grade 12, particularly, but not exclusively, children in those groups that were significantly overidentified under paragraph (a) or (b) of this section, including—</p> <p>(i) Children who are not currently identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment; and</p> <p>(ii) Children with disabilities.</p> <p>(3) An LEA may not limit the provision of comprehensive coordinated early intervening services under this paragraph to children with disabilities.</p> <p>(e) <i>Exception to comprehensive coordinated early intervening services.</i> The State or the Secretary of the Interior shall not require any LEA that serves only children with disabilities identified under paragraphs (a) and (b) of this section to reserve funds to provide comprehensive coordinated early intervening services.</p> <p>(f) <i>Rule of construction.</i> Nothing in this section authorizes a State or an LEA to develop or implement policies, practices, or procedures that result in actions that violate the requirements of this part, including requirements related to child find and ensuring that a free appropriate public education is available to all eligible children with disabilities.</p> <p>(Authority: 20 U.S.C. 1413(f); 20 U.S.C. 1418(d)) Last Amended: 81 FR 92463, December 19, 2016</p> <p>§ 300.647 Determining significant disproportionality.</p> <p>(a) <i>Definitions.</i></p> <p>(1) <i>Alternate risk ratio</i> is a calculation performed by dividing the risk of a particular outcome for children in one racial or ethnic group within an LEA by the risk of that outcome for children in all other racial or ethnic groups in the State.</p> <p>(2) <i>Comparison group</i> consists of the children in all other racial or ethnic groups within an LEA or within the State, when reviewing a particular racial or ethnic group within an LEA for significant disproportionality.</p> <p>(3) <i>Minimum cell size</i> is the minimum number of children experiencing a particular outcome, to be used as the numerator when calculating either the risk for a particular racial or ethnic group or the risk for children in all other racial or ethnic groups.</p>	<p>requirements.</p> <p>(5) Reevaluate data requirements. All data elements are reviewed by the commissioner-appointed subcommittee(s) and policy advisory group on a three-year cycle as part of an ongoing sunset process. The sunset process is designed to ensure that data standards meet the requirements specified in TEC, §42.006(c)(1)-(3) and (d).</p> <p>(d) Internal review process. The commissioner shall establish and determine the membership of a TEA committee that provides oversight of the TEA data collections and reporting policies. The commissioner shall also establish a TEA subcommittee that reviews data collections and reporting standards according to the requirements specified in TEC, §42.006(c)(1)-(3) and (d). The subcommittee is also responsible for maintaining data collections at the TEA. The procedure for adding, deleting, or modifying data elements described in subsection (c)(1)-(5) of this section provides consistency in updates to data and reporting standards. The commissioner may approve changes to data and reporting standards outside this process if necessary to expedite implementation.</p> <p>Last Amended: July 14, 2005, 30 TexReg 3995</p>	<p>(c) Annually, the commissioner shall review the Public Education Information Management System and shall repeal or amend rules that require school districts to provide information through the Public Education Information Management System that is not necessary. In reviewing and revising the Public Education Information Management System, the commissioner shall develop rules to ensure that the system:</p> <p>(1) provides useful, accurate, and timely information on student demographics and academic performance, personnel, and school district finances;</p> <p>(2) contains only the data necessary for the legislature and the agency to perform their legally authorized functions in overseeing the public education system; and</p> <p>(3) does not contain any information related to instructional methods, except as provided by Section 29.066 or required by federal law.</p> <p>(d) The commissioner's rules must ensure that the Public Education Information Management System links student performance data to other related information for purposes of efficient and effective allocation of scarce school resources, to the extent practicable using existing agency resources and appropriations.</p> <p>Last Amended: 85th Leg., R.S., Ch. 735 (S.B. 1153), Sec. 4, eff. June 12, 2017 85th Leg., R.S., Ch. 916 (S.B. 1404), Sec. 1, eff. June 15, 2017 85th Leg., R.S., Ch. 550 (S.B. 490), Sec. 3, eff. June 9, 2017</p>
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<p>(4) <i>Minimum n-size</i> is the minimum number of children enrolled in an LEA with respect to identification, and the minimum number of children with disabilities enrolled in an LEA with respect to placement and discipline, to be used as the denominator when calculating either the risk for a particular racial or ethnic group or the risk for children in all other racial or ethnic groups.</p> <p>(5) <i>Risk</i> is the likelihood of a particular outcome (identification, placement, or disciplinary removal) for a specified racial or ethnic group (or groups), calculated by dividing the number of children from a specified racial or ethnic group (or groups) experiencing that outcome by the total number of children from that racial or ethnic group or groups enrolled in the LEA.</p> <p>(6) <i>Risk ratio</i> is a calculation performed by dividing the risk of a particular outcome for children in one racial or ethnic group within an LEA by the risk for children in all other racial and ethnic groups within the LEA.</p> <p>(7) <i>Risk ratio threshold</i> is a threshold, determined by the State, over which disproportionality based on race or ethnicity is significant under § 300.646(a) and (b).</p> <p>(b) <i>Significant disproportionality determinations.</i> In determining whether significant disproportionality exists in a State or LEA under § 300.646(a) and (b)—</p> <p>(1)</p> <p>(i) The State must set a:</p> <p>(A) Reasonable risk ratio threshold;</p> <p>(B) Reasonable minimum cell size;</p> <p>(C) Reasonable minimum n-size; and</p> <p>(D) Standard for measuring reasonable progress if a State uses the flexibility described in paragraph (d)(2) of this section.</p> <p>(ii) The State may, but is not required to, set the standards set forth in paragraph (b)(1)(i) of this section at different levels for each of the categories described in paragraphs (b)(3) and (4) of this section.</p> <p>(iii) The standards set forth in paragraph (b)(1)(i) of this section:</p> <p>(A) Must be based on advice from stakeholders, including State Advisory Panels, as provided under section 612(a)(21)(D)(iii) of the Act; and</p> <p>(B) Are subject to monitoring and enforcement for reasonableness by the Secretary consistent with section 616 of the Act.</p> <p>(iv) When monitoring for reasonableness under paragraph (b)(1)(iii)(B) of this section, the Department finds that the following are presumptively reasonable:</p>		
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<p>(A) A minimum cell size under paragraph (b)(1)(i)(B) of this section no greater than 10; and</p> <p>(B) A minimum n-size under paragraph (b)(1)(i)(C) of this section no greater than 30.</p> <p>(2) The State must apply the risk ratio threshold or thresholds determined in paragraph (b)(1) of this section to risk ratios or alternate risk ratios, as appropriate, in each category described in paragraphs (b)(3) and (4) of this section and the following racial and ethnic groups:</p> <ul style="list-style-type: none"> (i) Hispanic/Latino of any race; and, for individuals who are non-Hispanic/Latino only; (ii) American Indian or Alaska Native; (iii) Asian; (iv) Black or African American; (v) Native Hawaiian or Other Pacific Islander; (vi) White; and (vii) Two or more races. <p>(3) Except as provided in paragraphs (b)(5) and (c) of this section, the State must calculate the risk ratio for each LEA, for each racial and ethnic group in paragraph (b)(2) of this section with respect to:</p> <ul style="list-style-type: none"> (i) The identification of children ages 3 through 21 as children with disabilities; and (ii) The identification of children ages 3 through 21 as children with the following impairments: <ul style="list-style-type: none"> (A) Intellectual disabilities; (B) Specific learning disabilities; (C) Emotional disturbance; (D) Speech or language impairments; (E) Other health impairments; and (F) Autism. <p>(4) Except as provided in paragraphs (b)(5) and (c) of this section, the State must calculate the risk ratio for each LEA, for each racial and ethnic group in paragraph (b)(2) of this section with respect to the following placements into particular educational settings, including disciplinary removals:</p> <ul style="list-style-type: none"> (i) For children with disabilities ages 6 through 21, inside a regular class less than 40 percent of the day; (ii) For children with disabilities ages 6 through 21, inside separate schools and residential facilities, not including homebound or hospital settings, correctional facilities, or private schools; (iii) For children with disabilities ages 3 through 21, out-of-school suspensions and expulsions of 10 days or fewer; 		
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<p>(iv) For children with disabilities ages 3 through 21, out-of-school suspensions and expulsions of more than 10 days;</p> <p>(v) For children with disabilities ages 3 through 21, in-school suspensions of 10 days or fewer;</p> <p>(vi) For children with disabilities ages 3 through 21, in-school suspensions of more than 10 days; and</p> <p>(vii) For children with disabilities ages 3 through 21, disciplinary removals in total, including in-school and out-of-school suspensions, expulsions, removals by school personnel to an interim alternative education setting, and removals by a hearing officer.</p> <p>(5) The State must calculate an alternate risk ratio with respect to the categories described in paragraphs (b)(3) and (4) of this section if the comparison group in the LEA does not meet the minimum cell size or the minimum n-size.</p> <p>(6) Except as provided in paragraph (d) of this section, the State must identify as having significant disproportionality based on race or ethnicity under § 300.646(a) and (b) any LEA that has a risk ratio or alternate risk ratio for any racial or ethnic group in any of the categories described in paragraphs (b)(3) and (4) of this section that exceeds the risk ratio threshold set by the State for that category.</p> <p>(7) The State must report all risk ratio thresholds, minimum cell sizes, minimum n-sizes, and standards for measuring reasonable progress selected under paragraphs (b)(1)(i)(A) through (D) of this section, and the rationales for each, to the Department at a time and in a manner determined by the Secretary. Rationales for minimum cell sizes and minimum n-sizes not presumptively reasonable under paragraph (b)(1)(iv) of this section must include a detailed explanation of why the numbers chosen are reasonable and how they ensure that the State is appropriately analyzing and identifying LEAs with significant disparities, based on race and ethnicity, in the identification, placement, or discipline of children with disabilities.</p> <p>(c) <i>Exception.</i> A State is not required to calculate a risk ratio or alternate risk ratio, as outlined in paragraphs (b)(3), (4), and (5) of this section, to determine significant disproportionality if:</p> <p>(1) The particular racial or ethnic group being analyzed does not meet the minimum cell size or minimum n-size; or</p> <p>(2) In calculating the alternate risk ratio under paragraph (b)(5) of this section, the comparison group in the State does not meet the minimum cell size or minimum n-size.</p> <p>(d) <i>Flexibility.</i> A State is not required to identify an LEA as having significant disproportionality based on race or ethnicity under § 300.646(a) and (b) until—</p> <p>(1) The LEA has exceeded a risk ratio threshold set by the State for a racial or ethnic group in a category described</p>		
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<p>in paragraph (b)(3) or (4) of this section for up to three prior consecutive years preceding the identification; and</p> <p>(2) The LEA has exceeded the risk ratio threshold and has failed to demonstrate reasonable progress, as determined by the State, in lowering the risk ratio or alternate risk ratio for the group and category in each of the two prior consecutive years.</p> <p>(Authority: 20 U.S.C. 1418(d).) Last Amended: 81 FR 92463, December 19, 2016</p>		
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<p>Subpart G Authorization, Allotment, Use of Funds, and Authorization of Appropriations Allotments, Grants, and Use of Funds</p>	<p>Texas Administrative Code</p>	<p>Texas Education Code</p>
<p>§ 300.700 Grants to States.</p> <p>(a) <i>Purpose of grants.</i> The Secretary makes grants to States, outlying areas, and freely associated States (as defined in §300.717), and provides funds to the Secretary of the Interior, to assist them to provide special education and related services to children with disabilities in accordance with Part B of the Act.</p> <p>(b) <i>Maximum amount.</i> The maximum amount of the grant a State may receive under section 611 of the Act is—</p> <p>(1) For fiscal years 2005 and 2006—</p> <p>(i) The number of children with disabilities in the State who are receiving special education and related services—</p> <p>(A) Aged three through five, if the State is eligible for a grant under section 619 of the Act; and</p> <p>(B) Aged 6 through 21; multiplied by—</p> <p>(ii) Forty (40) percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States (as defined in §300.717); and</p> <p>(2) For fiscal year 2007 and subsequent fiscal years—</p> <p>(i) The number of children with disabilities in the 2004–2005 school year in the State who received special education and related services—</p> <p>(A) Aged three through five if the State is eligible for a grant under section 619 of the Act; and</p> <p>(B) Aged 6 through 21; multiplied by</p> <p>(ii) Forty (40) percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States (as defined in §300.717);</p> <p>(iii) Adjusted by the rate of annual change in the sum of—</p> <p>(A) Eighty-five (85) percent of the State's population of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of FAPE under Part B of the Act; and</p> <p>(B) Fifteen (15) percent of the State's population of children described in paragraph (b)(2)(iii)(A) of this section who are living in poverty.</p> <p>(Authority: 20 U.S.C. 1411(a) and (d)) Last Amended: 71 FR 46805, Aug. 14, 2006</p>		

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§ 300.701 Outlying areas, freely associated States, and the Secretary of the Interior.

- (a) *Outlying areas and freely associated States.*
 - (1) *Funds reserved.* From the amount appropriated for any fiscal year under section 611(i) of the Act, the Secretary reserves not more than one percent, which must be used—
 - (i) To provide assistance to the outlying areas in accordance with their respective populations of individuals aged 3 through 21; and
 - (ii) To provide each freely associated State a grant in the amount that the freely associated State received for fiscal year 2003 under Part B of the Act, but only if the freely associated State—
 - (A) Meets the applicable requirements of Part B of the Act that apply to States.
 - (B) Meets the requirements in paragraph (a)(2) of this section.
 - (2) *Application.* Any freely associated State that wishes to receive funds under Part B of the Act must include, in its application for assistance—
 - (i) Information demonstrating that it will meet all conditions that apply to States under Part B of the Act.
 - (ii) An assurance that, notwithstanding any other provision of Part B of the Act, it will use those funds only for the direct provision of special education and related services to children with disabilities and to enhance its capacity to make FAPE available to all children with disabilities;
 - (iii) The identity of the source and amount of funds, in addition to funds under Part B of the Act, that it will make available to ensure that FAPE is available to all children with disabilities within its jurisdiction; and
 - (iv) Such other information and assurances as the Secretary may require.
 - (3) *Special rule.* The provisions of Public Law 95–134, permitting the consolidation of grants by the outlying areas, do not apply to funds provided to the outlying areas or to the freely associated States under Part B of the Act.
- (b) *Secretary of the Interior.* From the amount appropriated for any fiscal year under section 611(i) of the Act, the Secretary reserves 1.226 percent to provide assistance to the Secretary of the Interior in accordance with §§300.707 through 300.716.

(Authority: 20 U.S.C. 1411(b))

Last Amended: 71 FR 46805, Aug. 14, 2006

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§ 300.702 Technical assistance.

- (a) *In general.* The Secretary may reserve not more than one-half of one percent of the amounts appropriated under Part B of the Act for each fiscal year to support technical assistance activities authorized under section 616(i) of the Act.
- (b) *Maximum amount.* The maximum amount the Secretary may reserve under paragraph (a) of this section for any fiscal year is \$25,000,000, cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(Authority: 20 U.S.C. 1411(c))

Last Amended: 71 FR 46805, Aug. 14, 2006

§ 300.703 Allocations to States.

- (a) *General.* After reserving funds for technical assistance under §300.702, and for payments to the outlying areas, the freely associated States, and the Secretary of the Interior under §300.701 (a) and (b) for a fiscal year, the Secretary allocates the remaining amount among the States in accordance with paragraphs (b), (c), and (d) of this section.
- (b) *Special rule for use of fiscal year 1999 amount.* If a State received any funds under section 611 of the Act for fiscal year 1999 on the basis of children aged three through five, but does not make FAPE available to all children with disabilities aged three through five in the State in any subsequent fiscal year, the Secretary computes the State's amount for fiscal year 1999, solely for the purpose of calculating the State's allocation in that subsequent year under paragraph (c) or (d) of this section, by subtracting the amount allocated to the State for fiscal year 1999 on the basis of those children.
- (c) *Increase in funds.* If the amount available for allocations to States under paragraph (a) of this section for a fiscal year is equal to or greater than the amount allocated to the States under section 611 of the Act for the preceding fiscal year, those allocations are calculated as follows:
 - (1) *Allocation of increase—*
 - (i) *General.* Except as provided in paragraph (c)(2) of this section, the Secretary allocates for the fiscal year—
 - (A) To each State the amount the State received under this section for fiscal year 1999;
 - (B) Eighty-five (85) percent of any remaining funds to States on the basis of the States' relative populations of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of FAPE under Part B of the Act; and
 - (C) Fifteen (15) percent of those remaining funds to States on the basis of the States' relative

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<p>populations of children described in paragraph (c)(1)(i)(B) of this section who are living in poverty.</p> <p>(ii) <i>Data.</i> For the purpose of making grants under this section, the Secretary uses the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.</p> <p>(2) <i>Limitations.</i> Notwithstanding paragraph (c)(1) of this section, allocations under this section are subject to the following:</p> <p>(i) <i>Preceding year allocation.</i> No State's allocation may be less than its allocation under section 611 of the Act for the preceding fiscal year.</p> <p>(ii) <i>Minimum.</i> No State's allocation may be less than the greatest of—</p> <p>(A) The sum of—</p> <p>(1) The amount the State received under section 611 of the Act for fiscal year 1999; and</p> <p>(2) One third of one percent of the amount by which the amount appropriated under section 611(i) of the Act for the fiscal year exceeds the amount appropriated for section 611 of the Act for fiscal year 1999;</p> <p>(B) The sum of—</p> <p>(1) The amount the State received under section 611 of the Act for the preceding fiscal year; and</p> <p>(2) That amount multiplied by the percentage by which the increase in the funds appropriated for section 611 of the Act from the preceding fiscal year exceeds 1.5 percent; or</p> <p>(C) The sum of—</p> <p>(1) The amount the State received under section 611 of the Act for the preceding fiscal year; and</p> <p>(2) That amount multiplied by 90 percent of the percentage increase in the amount appropriated for section 611 of the Act from the preceding fiscal year.</p> <p>(iii) <i>Maximum.</i> Notwithstanding paragraph (c)(2)(ii) of this section, no State's allocation under paragraph (a) of this section may exceed the sum of—</p> <p>(A) The amount the State received under section 611 of the Act for the preceding fiscal year; and</p> <p>(B) That amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under section 611 of the</p>		
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<p>Act from the preceding fiscal year.</p> <p>(3) <i>Ratable reduction.</i> If the amount available for allocations to States under paragraph (c) of this section is insufficient to pay those allocations in full, those allocations are ratably reduced, subject to paragraph (c)(2)(i) of this section.</p> <p>(d) <i>Decrease in funds.</i> If the amount available for allocations to States under paragraph (a) of this section for a fiscal year is less than the amount allocated to the States under section 611 of the Act for the preceding fiscal year, those allocations are calculated as follows:</p> <p>(1) <i>Amounts greater than fiscal year 1999 allocations.</i> If the amount available for allocations under paragraph (a) of this section is greater than the amount allocated to the States for fiscal year 1999, each State is allocated the sum of—</p> <p>(i) <i>1999 amount.</i> The amount the State received under section 611 of the Act for fiscal year 1999; and</p> <p>(ii) <i>Remaining funds.</i> An amount that bears the same relation to any remaining funds as the increase the State received under section 611 of the Act for the preceding fiscal year over fiscal year 1999 bears to the total of all such increases for all States.</p> <p>(2) <i>Amounts equal to or less than fiscal year 1999 allocations—</i></p> <p>(i) <i>General.</i> If the amount available for allocations under paragraph (a) of this section is equal to or less than the amount allocated to the States for fiscal year 1999, each State is allocated the amount it received for fiscal year 1999.</p> <p>(ii) <i>Ratable reduction.</i> If the amount available for allocations under paragraph (d) of this section is insufficient to make the allocations described in paragraph (d)(2)(i) of this section, those allocations are ratably reduced.</p> <p>(Authority: 20 U.S.C. 1411(d)) Last Amended: 71 FR 46806, Aug. 14, 2006</p> <p>§ 300.704 State-level activities.</p> <p>(a) <i>State administration.</i></p> <p>(1) For the purpose of administering Part B of the Act, including paragraph (c) of this section, section 619 of the Act, and the coordination of activities under Part B of the Act with, and providing technical assistance to, other programs that provide services to children with disabilities—</p> <p>(i) Each State may reserve for each fiscal year not more than the maximum amount the State was eligible to reserve for State administration under section 611 of the Act for fiscal year 2004 or</p>		
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<p>\$800,000 (adjusted in accordance with paragraph (a)(2) of this section), whichever is greater; and</p> <p>(ii) Each outlying area may reserve for each fiscal year not more than five percent of the amount the outlying area receives under §300.701(a) for the fiscal year or \$35,000, whichever is greater.</p> <p>(2) For each fiscal year, beginning with fiscal year 2005, the Secretary cumulatively adjusts—</p> <p>(i) The maximum amount the State was eligible to reserve for State administration under section 611 of the Act for fiscal year 2004; and</p> <p>(ii) \$800,000, by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.</p> <p>(3) Prior to expenditure of funds under paragraph (a) of this section, the State must certify to the Secretary that the arrangements to establish responsibility for services pursuant to section 612(a)(12)(A) of the Act are current.</p> <p>(4) Funds reserved under paragraph (a)(1) of this section may be used for the administration of Part C of the Act, if the SEA is the lead agency for the State under that Part.</p> <p>(b) <i>Other State-level activities.</i></p> <p>(1) States may reserve a portion of their allocations for other State-level activities. The maximum amount that a State may reserve for other State-level activities is as follows:</p> <p>(i) If the amount that the State sets aside for State administration under paragraph (a) of this section is greater than \$850,000 and the State opts to finance a high cost fund under paragraph (c) of this section:</p> <p>(A) For fiscal years 2005 and 2006, 10 percent of the State's allocation under §300.703.</p> <p>(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to 10 percent of the State's allocation for fiscal year 2006 under §300.703 adjusted cumulatively for inflation.</p> <p>(ii) If the amount that the State sets aside for State administration under paragraph (a) of this section is greater than \$850,000 and the State opts not to finance a high cost fund under paragraph (c) of this section—</p> <p>(A) For fiscal years 2005 and 2006, nine percent of the State's allocation under §300.703.</p> <p>(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to nine percent of the State's allocation for fiscal year 2006 adjusted cumulatively for inflation.</p> <p>(iii) If the amount that the State sets aside for State administration under paragraph (a) of this section is less than or equal to \$850,000 and the State opts to</p>		
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<p>finance a high cost fund under paragraph (c) of this section:</p> <p>(A) For fiscal years 2005 and 2006, 10.5 percent of the State's allocation under §300.703.</p> <p>(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to 10.5 percent of the State's allocation for fiscal year 2006 under §300.703 adjusted cumulatively for inflation.</p> <p>(iv) If the amount that the State sets aside for State administration under paragraph (a) of this section is equal to or less than \$850,000 and the State opts not to finance a high cost fund under paragraph (c) of this section:</p> <p>(A) For fiscal years 2005 and 2006, nine and one-half percent of the State's allocation under §300.703.</p> <p>(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to nine and one-half percent of the State's allocation for fiscal year 2006 under §300.703 adjusted cumulatively for inflation.</p> <p>(2) The adjustment for inflation is the rate of inflation as measured by the percentage of increase, if any, from the preceding fiscal year in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.</p> <p>(3) Some portion of the funds reserved under paragraph (b)(1) of this section must be used to carry out the following activities:</p> <p>(i) For monitoring, enforcement, and complaint investigation; and</p> <p>(ii) To establish and implement the mediation process required by section 615(e) of the Act, including providing for the costs of mediators and support personnel;</p> <p>(4) Funds reserved under paragraph (b)(1) of this section also may be used to carry out the following activities:</p> <p>(i) For support and direct services, including technical assistance, personnel preparation, and professional development and training;</p> <p>(ii) To support paperwork reduction activities, including expanding the use of technology in the IEP process;</p> <p>(iii) To assist LEAs in providing positive behavioral interventions and supports and mental health services for children with disabilities;</p> <p>(iv) To improve the use of technology in the classroom by children with disabilities to enhance learning;</p> <p>(v) To support the use of technology, including technology with universal design principles and assistive technology devices, to maximize</p>		
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<p>accessibility to the general education curriculum for children with disabilities;</p> <ul style="list-style-type: none"> (vi) Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to postsecondary activities; (vii) To assist LEAs in meeting personnel shortages; (viii) To support capacity building activities and improve the delivery of services by LEAs to improve results for children with disabilities; (ix) Alternative programming for children with disabilities who have been expelled from school, and services for children with disabilities in correctional facilities, children enrolled in State-operated or State-supported schools, and children with disabilities in charter schools; (x) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with sections 1111(b) and 1201 of the ESEA; and (xi) To provide technical assistance to schools and LEAs, and direct services, including direct student services described in section 1003A(c)(3) of the ESEA, to children with disabilities, in schools or LEAs implementing comprehensive support and improvement activities or targeted support and improvement activities under section 1111(d) of the ESEA on the basis of consistent underperformance of the disaggregated subgroup of children with disabilities, including providing professional development to special and regular education teachers who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement based on the challenging academic standards described in section 1111(b)(1) of the ESEA. <p>(c) <i>Local educational agency high cost fund.</i></p> <ul style="list-style-type: none"> (1) In general— <ul style="list-style-type: none"> (i) For the purpose of assisting LEAs (including a charter school that is an LEA or a consortium of LEAs) in addressing the needs of high need children with disabilities, each State has the option to reserve for each fiscal year 10 percent of the amount of funds the State reserves for other State-level activities under paragraph (b)(1) of this section— <ul style="list-style-type: none"> (A) To finance and make disbursements from the high cost fund to LEAs in accordance with paragraph (c) of this section during the first 		
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<p>and succeeding fiscal years of the high cost fund; and</p> <p>(B) To support innovative and effective ways of cost sharing by the State, by an LEA, or among a consortium of LEAs, as determined by the State in coordination with representatives from LEAs, subject to paragraph (c)(2)(ii) of this section.</p> <p>(ii) For purposes of paragraph (c) of this section, local educational agency includes a charter school that is an LEA, or a consortium of LEAs.</p> <p>(2)</p> <p>(i) A State must not use any of the funds the State reserves pursuant to paragraph (c)(1)(i) of this section, which are solely for disbursement to LEAs, for costs associated with establishing, supporting, and otherwise administering the fund. The State may use funds the State reserves under paragraph (a) of this section for those administrative costs.</p> <p>(ii) A State must not use more than 5 percent of the funds the State reserves pursuant to paragraph (c)(1)(i) of this section for each fiscal year to support innovative and effective ways of cost sharing among consortia of LEAs.</p> <p>(3)</p> <p>(i) The SEA must develop, not later than 90 days after the State reserves funds under paragraph (c)(1)(i) of this section, annually review, and amend as necessary, a State plan for the high cost fund. Such State plan must—</p> <p>(A) Establish, in consultation and coordination with representatives from LEAs, a definition of a high need child with a disability that, at a minimum—</p> <p>(1) Addresses the financial impact a high need child with a disability has on the budget of the child's LEA; and</p> <p>(2) Ensures that the cost of the high need child with a disability is greater than 3 times the average per pupil expenditure (as defined in section 8101 of the ESEA) in that State;</p> <p>(B) Establish eligibility criteria for the participation of an LEA that, at a minimum, take into account the number and percentage of high need children with disabilities served by an LEA;</p> <p>(C) Establish criteria to ensure that placements supported by the fund are consistent with the requirements of §§300.114 through 300.118;</p> <p>(D) Develop a funding mechanism that provides distributions each fiscal year to LEAs that</p>		
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<p>meet the criteria developed by the State under paragraph(c)(3)(i)(B) of this section;</p> <p>(E) Establish an annual schedule by which the SEA must make its distributions from the high cost fund each fiscal year; and</p> <p>(F) If the State elects to reserve funds for supporting innovative and effective ways of cost sharing under paragraph (c)(1)(i)(B) of this section, describe how these funds will be used.</p> <p>(ii) The State must make its final State plan available to the public not less than 30 days before the beginning of the school year, including dissemination of such information on the State Web site.</p> <p>(4)</p> <p>(i) Each SEA must make all annual disbursements from the high cost fund established under paragraph (c)(1)(i) of this section in accordance with the State plan published pursuant to paragraph (c)(3) of this section.</p> <p>(ii) The costs associated with educating a high need child with a disability, as defined under paragraph (c)(3)(i)(A) of this section, are only those costs associated with providing direct special education and related services to the child that are identified in that child's IEP, including the cost of room and board for a residential placement determined necessary, consistent with §300.114, to implement a child's IEP.</p> <p>(iii) The funds in the high cost fund remain under the control of the State until disbursed to an LEA to support a specific child who qualifies under the State plan for the high cost funds or distributed to LEAs, consistent with paragraph (c)(9) of this section.</p> <p>(5) The disbursements under paragraph (c)(4) of this section must not be used to support legal fees, court costs, or other costs associated with a cause of action brought on behalf of a child with a disability to ensure FAPE for such child.</p> <p>(6) Nothing in paragraph (c) of this section—</p> <p>(i) Limits or conditions the right of a child with a disability who is assisted under Part B of the Act to receive FAPE pursuant to section 612(a)(1) of the Act in the least restrictive environment pursuant to section 612(a)(5) of the Act; or</p> <p>(ii) Authorizes an SEA or LEA to establish a limit on what may be spent on the education of a child with a disability.</p> <p>(7) Notwithstanding the provisions of paragraphs (c)(1) through (6) of this section, a State may use funds reserved pursuant to paragraph (c)(1)(i) of this section for</p>		
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<p>implementing a placement neutral cost sharing and reimbursement program of high need, low incidence, catastrophic, or extraordinary aid to LEAs that provides services to high need children based on eligibility criteria for such programs that were created not later than January 1, 2004, and are currently in operation, if such program serves children that meet the requirement of the definition of a high need child with a disability as described in paragraph (c)(3)(i)(A) of this section.</p> <p>(8) Disbursements provided under paragraph (c) of this section must not be used to pay costs that otherwise would be reimbursed as medical assistance for a child with a disability under the State Medicaid program under Title XIX of the Social Security Act.</p> <p>(9) Funds reserved under paragraph (c)(1)(i) of this section from the appropriation for any fiscal year, but not expended pursuant to paragraph (c)(4) of this section before the beginning of their last year of availability for obligation, must be allocated to LEAs in the same manner as other funds from the appropriation for that fiscal year are allocated to LEAs under §300.705 during their final year of availability.</p> <p>(d) <i>Inapplicability of certain prohibitions.</i> A State may use funds the State reserves under paragraphs (a) and (b) of this section without regard to—</p> <p>(1) The prohibition on commingling of funds in §300.162(b).</p> <p>(2) The prohibition on supplanting other funds in §300.162(c).</p> <p>(e) <i>Special rule for increasing funds.</i> A State may use funds the State reserves under paragraph (a)(1) of this section as a result of inflationary increases under paragraph (a)(2) of this section to carry out activities authorized under paragraph(b)(4)(i), (iii), (vii), or (viii) of this section.</p> <p>(f) <i>Flexibility in using funds for Part C.</i> Any State eligible to receive a grant under section 619 of the Act may use funds made available under paragraph (a)(1) of this section, §300.705(c), or §300.814(e) to develop and implement a State policy jointly with the lead agency under Part C of the Act and the SEA to provide early intervention services (which must include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with Part C of the Act to children with disabilities who are eligible for services under section 619 of the Act and who previously received services under Part C of the Act until the children enter, or are eligible under State law to enter, kindergarten, or elementary school as appropriate.</p> <p>(Authority: 20 U.S.C. 1411(e)) Last Amended: 82 FR 29761, June 30, 2017</p> <p>§ 300.705 Subgrants to LEAs.</p> <p>(a) <i>Subgrants required.</i> Each State that receives a grant under section 611 of the Act for any fiscal year must distribute any</p>	<p>§ 89.1065. Extended School Year Services.</p> <p>Extended school year (ESY) services are defined as individualized instructional programs beyond the regular school year for eligible</p>	<p>§ 42.151. Special Education.</p> <p>(a) For each student in average daily attendance in a special education program under Subchapter A, Chapter 29, in a</p>
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<p>funds the State does not reserve under §300.704 to LEAs (including public charter schools that operate as LEAs) in the State that have established their eligibility under section 613 of the Act for use in accordance with Part B of the Act. Effective with funds that become available on the July 1, 2009, each State must distribute funds to eligible LEAs, including public charter schools that operate as LEAs, even if the LEA is not serving any children with disabilities.</p> <p>(b) <i>Allocations to LEAs.</i> For each fiscal year for which funds are allocated to States under §300.703, each State shall allocate funds as follows:</p> <p>(1) <i>Base payments.</i> The State first must award each LEA described in paragraph (a) of this section the amount the LEA would have received under section 611 of the Act for fiscal year 1999, if the State had distributed 75 percent of its grant for that year under section 611(d) of the Act, as that section was then in effect.</p> <p>(2) <i>Base payment adjustments.</i> For any fiscal year after 1999—</p> <p>(i) If a new LEA is created, the State must divide the base allocation determined under paragraph (b)(1) of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if a State has had its payment reduced under §300.703(b), currently provided special education by each of the LEAs;</p> <p>(ii) If one or more LEAs are combined into a single new LEA, the State must combine the base allocations of the merged LEAs;</p> <p>(iii) If, for two or more LEAs, geographic boundaries or administrative responsibility for providing services to children with disabilities ages 3 through 21 change, the base allocations of affected LEAs must be redistributed among affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if a State has had its payment reduced under §300.703(b), currently provided special education by each affected LEA; and</p> <p>(iv) If an LEA received a base payment of zero in its first year of operation, the SEA must adjust the base payment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any children with disabilities. The State must divide the base allocation determined under paragraph (b)(1) of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the LEA, among the LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 currently provided special education by each of the LEAs. This</p>	<p>students with disabilities.</p> <p>(1) The need for ESY services must be determined on an individual student basis by the admission, review, and dismissal (ARD) committee in accordance with 34 Code of Federal Regulations (CFR), §300.106, and the provisions of this section. In determining the need for and in providing ESY services, a school district may not:</p> <p>(A) limit ESY services to particular categories of disability; or</p> <p>(B) unilaterally limit the type, amount, or duration of ESY services.</p> <p>(2) The need for ESY services must be documented from formal and/or informal evaluations provided by the district or the parents. The documentation must demonstrate that in one or more critical areas addressed in the current individualized education program (IEP) goals and objectives, the student has exhibited, or reasonably may be expected to exhibit, severe or substantial regression that cannot be recouped within a reasonable period of time. Severe or substantial regression means that the student has been, or will be, unable to maintain one or more acquired critical skills in the absence of ESY services.</p> <p>(3) The reasonable period of time for recoupment of acquired critical skills must be determined on the basis of needs identified in each student's IEP. If the loss of acquired critical skills would be particularly severe or substantial, or if such loss results, or reasonably may be expected to result, in immediate physical harm to the student or to others, ESY services may be justified without consideration of the period of time for recoupment of such skills. In any case, the period of time for recoupment must not exceed eight weeks.</p> <p>(4) A skill is critical when the loss of that skill results, or is reasonably expected to result, in any of the following occurrences during the first eight weeks of the next regular school year:</p> <p>(A) placement in a more restrictive instructional arrangement;</p> <p>(B) significant loss of acquired skills necessary for the student to appropriately progress in the general curriculum;</p> <p>(C) significant loss of self-sufficiency in self-help skill areas as evidenced by an increase in the number of direct service staff and/or amount of time required to provide special education or related services;</p> <p>(D) loss of access to community-based independent living skills instruction or an independent living environment provided by noneducational sources as a result of regression in skills; or</p> <p>(E) loss of access to on-the-job training or productive employment as a result of regression in skills.</p> <p>(5) If the district does not propose ESY services for discussion at the annual review of a student's IEP, the parent may request that the ARD committee discuss ESY services pursuant to 34 CFR, §300.321.</p>	<p>mainstream instructional arrangement, a school district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 1.1. For each full-time equivalent student in average daily attendance in a special education program under Subchapter A, Chapter 29, in an instructional arrangement other than a mainstream instructional arrangement, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by a weight determined according to instructional arrangement as follows:</p> <table border="0"> <tr> <td>Homebound</td> <td>5.0</td> </tr> <tr> <td>Hospital class</td> <td>3.0</td> </tr> <tr> <td>Speech therapy</td> <td>5.0</td> </tr> <tr> <td>Resource room</td> <td>3.0</td> </tr> <tr> <td>Self-contained, mild and moderate, regular campus</td> <td>3.0</td> </tr> <tr> <td>Self-contained, severe, regular campus</td> <td>3.0</td> </tr> <tr> <td>Off home campus</td> <td>2.7</td> </tr> <tr> <td>Nonpublic day school</td> <td>1.7</td> </tr> <tr> <td>Vocational adjustment class</td> <td>2.3</td> </tr> </table> <p>(b) A special instructional arrangement for students with disabilities residing in care and treatment facilities, other than state schools, whose parents or guardians do not reside in the district providing education services shall be established under the rules of the State Board of Education. The funding weight for this arrangement shall be 4.0 for those students who receive their education service on a local school district campus. A special instructional arrangement for students with disabilities residing in state schools shall be established under the rules of the State Board of Education with a funding weight of 2.8.</p> <p>(c) For funding purposes, the number of contact hours credited per day for each student in the off home campus instructional arrangement may not exceed the contact hours credited per day for the multidistrict class instructional arrangement in the 1992-1993 school year.</p> <p>(d) For funding purposes the contact hours credited per day for each student in the resource room; self-contained, mild and moderate; and self-contained, severe, instructional arrangements may not exceed the average of the statewide total contact hours credited per day for those three instructional arrangements in the 1992-1993 school year.</p> <p>(e) The State Board of Education by rule shall prescribe the qualifications an instructional arrangement must meet in order to be funded as a particular instructional arrangement under this section. In prescribing the qualifications that a mainstream instructional arrangement must meet, the board shall establish requirements that students with disabilities and their teachers receive the direct, indirect, and support services that are necessary to enrich the regular classroom and enable student success.</p> <p>(f) In this section, "full-time equivalent student" means 30 hours of contact a week between a special education student and</p>	Homebound	5.0	Hospital class	3.0	Speech therapy	5.0	Resource room	3.0	Self-contained, mild and moderate, regular campus	3.0	Self-contained, severe, regular campus	3.0	Off home campus	2.7	Nonpublic day school	1.7	Vocational adjustment class	2.3
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Vocational adjustment class	2.3																			

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<p>requirement takes effect with funds that become available on July 1, 2009.</p> <p>(3) Allocation of remaining funds. After making allocations under paragraph (b)(1) of this section, as adjusted by paragraph (b)(2) of this section, the State must—</p> <p>(i) Allocate 85 percent of any remaining funds to those LEAs on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the LEA's jurisdiction; and</p> <p>(ii) Allocate 15 percent of those remaining funds to those LEAs in accordance with their relative numbers of children living in poverty, as determined by the SEA.</p> <p>(c) Reallocation of LEA funds.</p> <p>(1) If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities residing in the area served by that agency with State and local funds, the SEA may reallocate any portion of the funds under this part that are not needed by that LEA to provide FAPE, to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other LEAs. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to §300.704.</p> <p>(2) After an SEA distributes funds under this part to an eligible LEA that is not serving any children with disabilities, as provided in paragraph (a) of this section, the SEA must determine, within a reasonable period of time prior to the end of the carryover period in 34 CFR 76.709, whether the LEA has obligated the funds. The SEA may reallocate any of those funds not obligated by the LEA to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other LEAs. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to §300.704.</p> <p>(Authority: 20 U.S.C. 1411(f)) Last Amended: 73 FR 73028, Dec. 1, 2008</p>	<p>(6) If a student for whom ESY services were considered and rejected loses critical skills because of the decision not to provide ESY services, and if those skills are not regained after the reasonable period of time for recoupment, the ARD committee must reconsider the current IEP if the student's loss of critical skills interferes with the implementation of the student's IEP.</p> <p>(7) For students enrolling in a district during the school year, information obtained from the prior school district as well as information collected during the current year may be used to determine the need for ESY services.</p> <p>(8) The provision of ESY services is limited to the educational needs of the student and must not supplant or limit the responsibility of other public agencies to continue to provide care and treatment services pursuant to policy or practice, even when those services are similar to, or the same as, the services addressed in the student's IEP. No student will be denied ESY services because the student receives care and treatment services under the auspices of other agencies.</p> <p>(9) Districts are not eligible for reimbursement for ESY services provided to students for reasons other than those set forth in this section.</p> <p>Last Amended: 0</p> <p>§ 89.1121. Distribution of State Funds.</p> <p>(a) Procedures for counting the average daily attendance (ADA) of students receiving special education services in various instructional settings must be developed by the commissioner of education and included in the student attendance accounting handbook adopted under §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook).</p> <p>(b) State special education funds must be distributed to school districts on the basis of ADA of full-time equivalents of eligible students served in accordance with §129.21 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes).</p> <p>(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 school district's adjusted basic allotment (ABA) or adjusted allotment (AA) and then multiplied by the weight for the instructional arrangement as prescribed in 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.</p> <p>(d) The receipt of special education funds is contingent upon the operation of an approved comprehensive special education program in accordance with state and federal laws and regulations. No district may divert special education funds for</p>	<p>special education program personnel.</p> <p>(g) The State Board of Education shall adopt rules and procedures governing contracts for residential placement of special education students. The legislature shall provide by appropriation for the state's share of the costs of those placements.</p> <p>(h) Funds allocated under this section, other than an indirect cost allotment established under State Board of Education rule, must be used in the special education program under Subchapter A, Chapter 29.</p> <p>(i) The agency shall encourage the placement of students in special education programs, including students in residential instructional arrangements, in the least restrictive environment appropriate for their educational needs.</p> <p>(j) Repealed by Acts 2011, 82nd Leg. R.S. Ch. 494, Sec. 1, eff. September 1, 2011.</p> <p>(k) A school district that provides an extended year program required by federal law for special education students who may regress is entitled to receive funds in an amount equal to 75 percent, or a lesser percentage determined by the commissioner, of the adjusted basic allotment or adjusted allotment, as applicable, for each full-time equivalent student in average daily attendance, multiplied by the amount designated for the student's instructional arrangement under this section, for each day the program is provided divided by the number of days in the minimum school year. The total amount of state funding for extended year services under this section may not exceed \$10 million per year. A school district may use funds received under this section only in providing an extended year program.</p> <p>(l) From the total amount of funds appropriated for special education under this section, the commissioner shall withhold an amount specified in the General Appropriations Act, and distribute that amount to school districts for programs under Section 29.014. The program established under that section is required only in school districts in which the program is financed by funds distributed under this subsection and any other funds available for the program. After deducting the amount withheld under this subsection from the total amount appropriated for special education, the commissioner shall reduce each district's allotment proportionately and shall allocate funds to each district accordingly.</p> <p>Last Amended: 82nd Leg., R.S., Ch. 494 (H.B. 1130), Sec. 1, eff. September 1, 2011</p>
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<p>§ 300.706 [Reserved]</p> <p>Secretary of the Interior</p> <p>§ 300.707 Use of amounts by Secretary of the Interior.</p> <p>(a) <i>Definitions.</i> For purposes of §§300.707 through 300.716, the following definitions apply:</p> <p>(1) <i>Reservation</i> means Indian Country as defined in 18 U.S.C. 1151.</p> <p>(2) <i>Tribal governing body</i> has the definition given that term in 25 U.S.C. 2021(19).</p> <p>(b) <i>Provision of amounts for assistance.</i> The Secretary provides amounts to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged 5 to 21, inclusive, enrolled in elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior. The amount of the payment for any fiscal year is equal to 80 percent of the amount allotted under section 611(b)(2) of the Act for that</p>	<p>other purposes, with the exception of administrative costs as defined in Chapter 105, Subchapter B, of this title (relating to Use of State Funds). Funds generated by full-time equivalents in one instructional arrangement may be spent on the overall special education program and are not limited to the instructional arrangement which generated the funds. The district must maintain separate accountability for the total state special education program fund within the general fund.</p> <p>(e) A special education fund balance may be carried over to the next fiscal year but must be expended on the special education program in the subsequent year. State special education carryover funds cannot be used for administrative costs.</p> <p>(f) Students who are at least three, but younger than 22, years of age on September 1 of the current scholastic year who participate in the regional day school program for the deaf may be counted as part of the district's ADA if they receive instruction from the basic program for at least 50% of the school day.</p> <p>(g) Students from birth through age two with a visual or auditory impairment 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.</p> <p>(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 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.</p> <p>Last Amended: January 1, 2015, 39 TexReg 10446</p>	
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<p>fiscal year. Of the amount described in the preceding sentence, after the Secretary of the Interior reserves funds for administration under §300.710, 80 percent must be allocated to such schools by July 1 of that fiscal year and 20 percent must be allocated to such schools by September 30 of that fiscal year.</p> <p>(c) <i>Additional requirement.</i> With respect to all other children aged 3 to 21, inclusive, on reservations, the SEA of the State in which the reservation is located must ensure that all of the requirements of Part B of the Act are implemented.</p> <p>(Authority: 20 U.S.C. 1411(h)(1)) Last Amended: 71 FR 46809, Aug. 14, 2006</p> <p>§ 300.708 Submission of information.</p> <p>The Secretary may provide the Secretary of the Interior amounts under §300.707 for a fiscal year only if the Secretary of the Interior submits to the Secretary information that—</p> <p>(a) Meets the requirements of section 612(a)(1), (3) through (9), (10)(B) through (C), (11) through (12), (14) through (16), (19), and (21) through (25) of the Act (including monitoring and evaluation activities);</p> <p>(b) Meets the requirements of section 612(b) and (e) of the Act;</p> <p>(c) Meets the requirements of section 613(a)(1), (2)(A)(i), (7) through (9) and section 613(i) of the Act (references to LEAs in these sections must be read as references to elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior);</p> <p>(d) Meets the requirements of section 616 of the Act that apply to States (references to LEAs in section 616 of the Act must be read as references to elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior).</p> <p>(e) Meets the requirements of this part that implement the sections of the Act listed in paragraphs (a) through (d) of this section;</p> <p>(f) Includes a description of how the Secretary of the Interior will coordinate the provision of services under Part B of the Act with LEAs, tribes and tribal organizations, and other private and Federal service providers;</p> <p>(g) Includes an assurance that there are public hearings, adequate notice of the hearings, and an opportunity for comment afforded to members of tribes, tribal governing bodies, and affected local school boards before the adoption of the policies, programs, and procedures related to the requirements described in paragraphs (a) through (d) of this section;</p> <p>(h) Includes an assurance that the Secretary of the Interior provides the information that the Secretary may require to comply with section 618 of the Act;</p> <p>(i) (1) Includes an assurance that the Secretary of the Interior and the Secretary of Health and Human Services have entered into a memorandum of agreement, to be</p>		
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<p>provided to the Secretary, for the coordination of services, resources, and personnel between their respective Federal, State, and local offices and with the SEAs and LEAs and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations.</p> <p>(2) The agreement must provide for the apportionment of responsibilities and costs, including child find, evaluation, diagnosis, remediation or therapeutic measures, and (where appropriate) equipment and medical or personal supplies, as needed for a child with a disability to remain in a school or program; and</p> <p>(j) Includes an assurance that the Department of the Interior will cooperate with the Department in its exercise of monitoring and oversight of the requirements in this section and §§300.709 through 300.711 and §§300.713 through 300.716, and any agreements entered into between the Secretary of the Interior and other entities under Part B of the Act, and will fulfill its duties under Part B of the Act. The Secretary withholds payments under §300.707 with respect to the requirements described in this section in the same manner as the Secretary withholds payments under section 616(e)(6) of the Act.</p> <p>(Authority: 20 U.S.C. 1411(h)(2) and (3)) Last Amended: 71 FR 46809, Aug. 14, 2006</p> <p>§ 300.709 Public participation. In fulfilling the requirements of §300.708 the Secretary of the Interior must provide for public participation consistent with §300.165. (Authority: 20 U.S.C. 1411(h)) Last Amended: 71 FR 46810, Aug. 14, 2006</p> <p>§ 300.710 Use of funds under Part B of the Act. (a) The Secretary of the Interior may reserve five percent of its payment under §300.707(b) in any fiscal year, or \$500,000, whichever is greater, for administrative costs in carrying out the provisions of §§300.707 through 300.709, 300.711, and 300.713 through 300.716. (b) Payments to the Secretary of the Interior under §300.712 must be used in accordance with that section. (Authority: 20 U.S.C. 1411(h)(1)(A)) Last Amended: 71 FR 46810, Aug. 14, 2006</p> <p>§ 300.711 Early intervening services. (a) The Secretary of the Interior may allow each elementary school and secondary school for Indian children operated or funded by the Secretary of the Interior to use not more than 15 percent of the amount the school receives under §300.707(b) for any fiscal year, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which</p>		
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<p>may include interagency financing structures, for children in kindergarten through grade 12 (with a particular emphasis on children in kindergarten through grade three) who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment, in accordance with section 613(f) of the Act.</p> <p>(b) Each elementary school and secondary school for Indian children operated or funded by the Secretary of the Interior that develops and maintains coordinated early intervening services in accordance with section 613(f) of the Act and §300.226 must annually report to the Secretary of the Interior in accordance with section 613(f) of the Act.</p> <p>(Authority: 20 U.S.C. 1411(h) and 1413(f)) Last Amended: 71 FR 46810, Aug. 14, 2006</p> <p>§ 300.712 Payments for education and services for Indian children with disabilities aged three through five.</p> <p>(a) <i>General.</i> With funds appropriated under section 611(i) of the Act, the Secretary makes payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortia of tribes or tribal organizations to provide for the coordination of assistance for special education and related services for children with disabilities aged three through five on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of the payments under paragraph (b) of this section for any fiscal year is equal to 20 percent of the amount allotted under §300.701(b).</p> <p>(b) <i>Distribution of funds.</i> The Secretary of the Interior must distribute the total amount of the payment under paragraph (a) of this section by allocating to each tribe, tribal organization, or consortium an amount based on the number of children with disabilities aged three through five residing on reservations as reported annually, divided by the total of those children served by all tribes or tribal organizations.</p> <p>(c) <i>Submission of information.</i> To receive a payment under this section, the tribe or tribal organization must submit the figures to the Secretary of the Interior as required to determine the amounts to be allocated under paragraph (b) of this section. This information must be compiled and submitted to the Secretary.</p> <p>(d) <i>Use of funds.</i></p> <p>(1) The funds received by a tribe or tribal organization must be used to assist in child find, screening, and other procedures for the early identification of children aged three through five, parent training, and the provision of direct services. These activities may be carried out directly or through contracts or cooperative agreements with the BIA, LEAs, and other public or private nonprofit organizations. The tribe or tribal organization is encouraged to involve Indian parents in the development</p>		
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<p>and implementation of these activities.</p> <p>(2) The tribe or tribal organization, as appropriate, must make referrals to local, State, or Federal entities for the provision of services or further diagnosis.</p> <p>(e) <i>Biennial report.</i> To be eligible to receive a grant pursuant to paragraph (a) of this section, the tribe or tribal organization must provide to the Secretary of the Interior a biennial report of activities undertaken under this section, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the two years following the year in which the report is made. The Secretary of the Interior must include a summary of this information on a biennial basis in the report to the Secretary required under section 611(h) of the Act. The Secretary may require any additional information from the Secretary of the Interior.</p> <p>(f) <i>Prohibitions.</i> None of the funds allocated under this section may be used by the Secretary of the Interior for administrative purposes, including child count and the provision of technical assistance.</p> <p>(Authority: 20 U.S.C. 1411(h)(4)) Last Amended: 71 FR 46810, Aug. 14, 2006</p> <p>§ 300.713 Plan for coordination of services.</p> <p>(a) The Secretary of the Interior must develop and implement a plan for the coordination of services for all Indian children with disabilities residing on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior.</p> <p>(b) The plan must provide for the coordination of services benefiting those children from whatever source, including tribes, the Indian Health Service, other BIA divisions, other Federal agencies, State educational agencies, and State, local, and tribal juvenile and adult correctional facilities.</p> <p>(c) In developing the plan, the Secretary of the Interior must consult with all interested and involved parties.</p> <p>(d) The plan must be based on the needs of the children and the system best suited for meeting those needs, and may involve the establishment of cooperative agreements between the BIA, other Federal agencies, and other entities.</p> <p>(e) The plan also must be distributed upon request to States; to SEAs, LEAs, and other agencies providing services to infants, toddlers, and children with disabilities; to tribes; and to other interested parties.</p> <p>(Authority: 20 U.S.C. 1411(h)(5)) Last Amended: 71 FR 46810, Aug. 14, 2006</p> <p>§ 300.714 Establishment of advisory board.</p>		
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<p>(a) To meet the requirements of section 612(a)(21) of the Act, the Secretary of the Interior must establish, under the BIA, an advisory board composed of individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities, including Indians with disabilities, Indian parents or guardians of such children, teachers, service providers, State and local educational officials, representatives of tribes or tribal organizations, representatives from State Interagency Coordinating Councils under section 641 of the Act in States having reservations, and other members representing the various divisions and entities of the BIA. The chairperson must be selected by the Secretary of the Interior.</p> <p>(b) The advisory board must—</p> <ol style="list-style-type: none"> (1) Assist in the coordination of services within the BIA and with other local, State, and Federal agencies in the provision of education for infants, toddlers, and children with disabilities; (2) Advise and assist the Secretary of the Interior in the performance of the Secretary of the Interior's responsibilities described in section 611(h) of the Act; (3) Develop and recommend policies concerning effective inter- and intra-agency collaboration, including modifications to regulations, and the elimination of barriers to inter- and intra-agency programs and activities; (4) Provide assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved early intervention services or educational programming for Indian infants, toddlers, and children with disabilities; and (5) Provide assistance in the preparation of information required under §300.708(h). <p>(Authority: 20 U.S.C. 1411(h)(6)) Last Amended: 71 FR 46810, Aug. 14, 2006</p> <p>§ 300.715 Annual reports.</p> <p>(a) <i>In general.</i> The advisory board established under §300.714 must prepare and submit to the Secretary of the Interior and to Congress an annual report containing a description of the activities of the advisory board for the preceding year.</p> <p>(b) <i>Availability.</i> The Secretary of the Interior must make available to the Secretary the report described in paragraph (a) of this section.</p> <p>(Authority: 20 U.S.C. 1411(h)(7)) Last Amended: 71 FR 46811, Aug. 14, 2006</p> <p>§ 300.716 Applicable regulations.</p>		
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The Secretary of the Interior must comply with the requirements of §§300.103 through 300.108, 300.110 through 300.124, 300.145 through 300.154, 300.156 through 300.160, 300.165, 300.170 through 300.186, 300.226, 300.300 through 300.606, 300.610 through 300.646, and 300.707 through 300.716.

(Authority: 20 U.S.C. 1411(h)(2)(A))

Last Amended: 71 FR 46811, Aug. 14, 2006

Definitions that Apply to this Subpart

§ 300.717 Definitions applicable to allotments, grants, and use of funds.

As used in this subpart—

- (a) *Freely associated States* means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau;
- (b) *Outlying areas* means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands;
- (c) *State* means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and
- (d) *Average per-pupil expenditure in public elementary schools and secondary schools in the United States* means—
 - (1) Without regard to the source of funds—
 - (i) The aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the determination is made (or, if satisfactory data for that year are not available, during the most recent preceding fiscal year for which satisfactory data are available) of all LEAs in the 50 States and the District of Columbia); plus
 - (ii) Any direct expenditures by the State for the operation of those agencies; divided by
 - (2) The aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year.

(Authority: 20 U.S.C. 1401(22), 1411(b)(1) (C) and (g))

Last Amended: 71 FR 46811, Aug. 14, 2006

Acquisition of Equipment and Construction or Alteration of Facilities

§ 300.718 Acquisition of equipment and construction or alteration of facilities.

- (a) *General.* If the Secretary determines that a program authorized under Part B of the Act will be improved by permitting program funds to be used to acquire appropriate

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<p>equipment, or to construct new facilities or alter existing facilities, the Secretary may allow the use of those funds for those purposes.</p> <p>(b) <i>Compliance with certain regulations.</i> Any construction of new facilities or alteration of existing facilities under paragraph (a) of this section must comply with the requirements of—</p> <ul style="list-style-type: none">(1) Appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the “Americans with Disabilities Accessibility Standards for Buildings and Facilities”); or(2) Appendix A of subpart 101–19.6 of title 41, Code of Federal Regulations (commonly known as the “Uniform Federal Accessibility Standards”). <p>(Authority: 20 U.S.C. 1404) Last Amended: 71 FR 46811, Aug. 14, 2006</p>		
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Subpart H Preschool Grants for Children with Disabilities	Texas Administrative Code	Texas Education Code
<p>§ 300.800 In general. The Secretary provides grants under section 619 of the Act to assist States to provide special education and related services in accordance with Part B of the Act—</p> <ul style="list-style-type: none"> (a) To children with disabilities aged three through five years; and (b) At a State's discretion, to two-year-old children with disabilities who will turn three during the school year. <p>(Authority: 20 U.S.C. 1419(a)) Last Amended: 71 FR 46811, Aug. 14, 2006</p> <p>§§ 300.801–300.802 [Reserved]</p> <p>§ 300.803 Definition of State. As used in this subpart, State means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. (Authority: 20 U.S.C. 1419(i)) Last Amended: 71 FR 46811, Aug. 14, 2006</p> <p>§ 300.804 Eligibility. A State is eligible for a grant under section 619 of the Act if the State—</p> <ul style="list-style-type: none"> (a) Is eligible under section 612 of the Act to receive a grant under Part B of the Act; and (b) Makes FAPE available to all children with disabilities, aged three through five, residing in the State. <p>(Authority: 20 U.S.C. 1419(b)) Last Amended: 71 FR 46811, Aug. 14, 2006</p> <p>§ 300.805 [Reserved]</p> <p>§ 300.806 Eligibility for financial assistance. No State or LEA, or other public institution or agency, may receive a grant or enter into a contract or cooperative agreement under subpart 2 or 3 of Part D of the Act that relates exclusively to programs, projects, and activities pertaining to children aged three through five years, unless the State is eligible to receive a grant under section 619(b) of the Act. (Authority: 20 U.S.C. 1481(e)) Last Amended: 71 FR 46811, Aug. 14, 2006</p>		

Federal Regulations**Commissioner's/SBOE Rules****State Laws****§ 300.807 Allocations to States.**

The Secretary allocates the amount made available to carry out section 619 of the Act for a fiscal year among the States in accordance with §§300.808 through 300.810.

(Authority: 20 U.S.C. 1419(c)(1))

Last Amended: 71 FR 46811, Aug. 14, 2006

§ 300.808 Increase in funds.

If the amount available for allocation to States under §300.807 for a fiscal year is equal to or greater than the amount allocated to the States under section 619 of the Act for the preceding fiscal year, those allocations are calculated as follows:

- (a) Except as provided in §300.809, the Secretary—
 - (1) Allocates to each State the amount the State received under section 619 of the Act for fiscal year 1997;
 - (2) Allocates 85 percent of any remaining funds to States on the basis of the States' relative populations of children aged three through five; and
 - (3) Allocates 15 percent of those remaining funds to States on the basis of the States' relative populations of all children aged three through five who are living in poverty.
- (b) For the purpose of making grants under this section, the Secretary uses the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

(Authority: 20 U.S.C. 1419(c)(2)(A))

Last Amended: 71 FR 46786, Aug. 14, 2006

§ 300.809 Limitations.

- (a) Notwithstanding §300.808, allocations under that section are subject to the following:
 - (1) No State's allocation may be less than its allocation under section 619 of the Act for the preceding fiscal year.
 - (2) No State's allocation may be less than the greatest of—
 - (i) The sum of—
 - (A) The amount the State received under section 619 of the Act for fiscal year 1997; and
 - (B) One-third of one percent of the amount by which the amount appropriated under section 619(j) of the Act for the fiscal year exceeds the amount appropriated for section 619 of the Act for fiscal year 1997;
 - (ii) The sum of—
 - (A) The amount the State received under section 619 of the Act for the preceding fiscal year; and
 - (B) That amount multiplied by the percentage by which the increase in the funds appropriated

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<p>under section 619 of the Act from the preceding fiscal year exceeds 1.5 percent; or</p> <p>(iii) The sum of—</p> <p>(A) The amount the State received under section 619 of the Act for the preceding fiscal year; and</p> <p>(B) That amount multiplied by 90 percent of the percentage increase in the amount appropriated under section 619 of the Act from the preceding fiscal year.</p> <p>(b) Notwithstanding paragraph (a)(2) of this section, no State's allocation under §300.808 may exceed the sum of—</p> <p>(1) The amount the State received under section 619 of the Act for the preceding fiscal year; and</p> <p>(2) That amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under section 619 of the Act from the preceding fiscal year.</p> <p>(c) If the amount available for allocation to States under §300.808 and paragraphs (a) and (b) of this section is insufficient to pay those allocations in full, those allocations are ratably reduced, subject to paragraph (a)(1) of this section.</p> <p>(Authority: 20 U.S.C. 1419(c)(2)(B) and (c)(2)(C)) Last Amended: 71 FR 46812, Aug. 14, 2006</p> <p>§ 300.810 Decrease in funds.</p> <p>If the amount available for allocations to States under §300.807 for a fiscal year is less than the amount allocated to the States under section 619 of the Act for the preceding fiscal year, those allocations are calculated as follows:</p> <p>(a) If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1997, each State is allocated the sum of—</p> <p>(1) The amount the State received under section 619 of the Act for fiscal year 1997; and</p> <p>(2) An amount that bears the same relation to any remaining funds as the increase the State received under section 619 of the Act for the preceding fiscal year over fiscal year 1997 bears to the total of all such increases for all States.</p> <p>(b) If the amount available for allocations is equal to or less than the amount allocated to the States for fiscal year 1997, each State is allocated the amount the State received for fiscal year 1997, ratably reduced, if necessary.</p> <p>(Authority: 20 U.S.C. 1419(c)(3)) Last Amended: 71 FR 46812, Aug. 14, 2006</p> <p>§ 300.811 [Reserved]</p>		
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§ 300.812 Reservation for State activities.

- (a) Each State may reserve not more than the amount described in paragraph (b) of this section for administration and other State-level activities in accordance with §§300.813 and 300.814.
- (b) For each fiscal year, the Secretary determines and reports to the SEA an amount that is 25 percent of the amount the State received under section 619 of the Act for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of—
 - (1) The percentage increase, if any, from the preceding fiscal year in the State's allocation under section 619 of the Act; or
 - (2) The rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(Authority: 20 U.S.C. 1419(d))
 Last Amended: 72 FR 61307, Oct. 30, 2007

§ 300.813 State administration.

- (a) For the purpose of administering section 619 of the Act (including the coordination of activities under Part B of the Act with, and providing technical assistance to, other programs that provide services to children with disabilities), a State may use not more than 20 percent of the maximum amount the State may reserve under §300.812 for any fiscal year.
- (b) Funds described in paragraph (a) of this section may also be used for the administration of Part C of the Act.

(Authority: 20 U.S.C. 1419(e))
 Last Amended: 71 FR 46812, Aug. 14, 2006

§ 300.814 Other State-level activities.

Each State must use any funds the State reserves under §300.812 and does not use for administration under §300.813—

- (a) For support services (including establishing and implementing the mediation process required by section 615(e) of the Act), which may benefit children with disabilities younger than three or older than five as long as those services also benefit children with disabilities aged three through five;
- (b) For direct services for children eligible for services under section 619 of the Act;
- (c) For activities at the State and local levels to meet the performance goals established by the State under section 612(a)(15) of the Act;
- (d) To supplement other funds used to develop and implement a statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not more than one percent of

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<p>the amount received by the State under section 619 of the Act for a fiscal year;</p> <p>(e) To provide early intervention services (which must include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with Part C of the Act to children with disabilities who are eligible for services under section 619 of the Act and who previously received services under Part C of the Act until such children enter, or are eligible under State law to enter, kindergarten; or</p> <p>(f) At the State's discretion, to continue service coordination or case management for families who receive services under Part C of the Act, consistent with §300.814(e).</p> <p>(Authority: 20 U.S.C. 1419(f)) Last Amended: 71 FR 46812, Aug. 14, 2006</p> <p>§ 300.815 Subgrants to LEAs.</p> <p>Each State that receives a grant under section 619 of the Act for any fiscal year must distribute all of the grant funds the State does not reserve under §300.812 to LEAs (including public charter schools that operate as LEAs) in the State that have established their eligibility under section 613 of the Act. Effective with funds that become available on July 1, 2009, each State must distribute funds to eligible LEAs that are responsible for providing education to children aged three through five years, including public charter schools that operate as LEAs, even if the LEA is not serving any preschool children with disabilities.</p> <p>(Authority: 20 U.S.C. 1419(g)(1)) Last Amended: 73 FR 73028, Dec. 1, 2008</p> <p>§ 300.816 Allocations to LEAs.</p> <p>(a) <i>Base payments.</i> The State must first award each LEA described in §300.815 the amount that agency would have received under section 619 of the Act for fiscal year 1997 if the State had distributed 75 percent of its grant for that year under section 619(c)(3), as such section was then in effect.</p> <p>(b) <i>Base payment adjustments.</i> For fiscal year 1998 and beyond—</p> <ol style="list-style-type: none"> (1) If a new LEA is created, the State must divide the base allocation determined under paragraph (a) of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of children with disabilities ages three through five currently provided special education by each of the LEAs; (2) If one or more LEAs are combined into a single new LEA, the State must combine the base allocations of the merged LEAs; (3) If for two or more LEAs, geographic boundaries or administrative responsibility for providing services to 		
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<p>children with disabilities ages three through five changes, the base allocations of affected LEAs must be redistributed among affected LEAs based on the relative numbers of children with disabilities ages three through five currently provided special education by each affected LEA; and.</p> <p>(4) If an LEA received a base payment of zero in its first year of operation, the SEA must adjust the base payment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any children with disabilities aged three through five years. The State must divide the base allocation determined under paragraph (a) of this section for the LEAs that would have been responsible for serving children with disabilities aged three through five years now being served by the LEA, among the LEA and affected LEAs based on the relative numbers of children with disabilities aged three through five years currently provided special education by each of the LEAs. This requirement takes effect with funds that become available on July 1, 2009.</p> <p>(c) <i>Allocation of remaining funds.</i> After making allocations under paragraph (a) of this section, the State must—</p> <p>(1) Allocate 85 percent of any remaining funds to those LEAs on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the LEA's jurisdiction; and</p> <p>(2) Allocate 15 percent of those remaining funds to those LEAs in accordance with their relative numbers of children living in poverty, as determined by the SEA.</p> <p>(d) <i>Use of best data.</i> For the purpose of making grants under this section, States must apply on a uniform basis across all LEAs the best data that are available to them on the numbers of children enrolled in public and private elementary and secondary schools and the numbers of children living in poverty.</p> <p>(Authority: 20 U.S.C. 1419(g)(1)) Last Amended: 73 FR 73028, Dec. 1, 2008</p> <p>§ 300.817 Reallocation of LEA funds.</p> <p>(a) If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities aged three through five years residing in the area served by the LEA with State and local funds, the SEA may reallocate any portion of the funds under section 619 of the Act that are not needed by that LEA to provide FAPE, to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities aged three through five years residing in the areas served by those other LEAs. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to §300.812.</p> <p>(b) After an SEA distributes section 619 funds to an eligible LEA</p>		
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<p>that is not serving any children with disabilities aged three through five years, as provided in §300.815, the SEA must determine, within a reasonable period of time prior to the end of the carryover period in 34 CFR 76.709, whether the LEA has obligated the funds. The SEA may reallocate any of those funds not obligated by the LEA to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities aged three through five years residing in the areas served by those other LEAs. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to §300.812.</p> <p>(Authority: 20 U.S.C. 1419(g)(2)) Last Amended: 73 FR 73028, Dec. 1, 2008</p> <p>§ 300.818 Part C of the Act inapplicable.</p> <p>Part C of the Act does not apply to any child with a disability receiving FAPE, in accordance with Part B of the Act, with funds received under section 619 of the Act.</p> <p>(Authority: 20 U.S.C. 1419(h)) Last Amended: 71 FR 46813, Aug. 14, 2006</p>		
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Appendix A to Part 300—Excess Costs Calculation

Except as otherwise provided, amounts provided to an LEA under Part B of the Act may be used only to pay the excess costs of providing special education and related services to children with disabilities. Excess costs are those costs for the education of an elementary school or secondary school student with a disability that are in excess of the average annual per student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate. An LEA must spend at least the average annual per student expenditure on the education of an elementary school or secondary school child with a disability before funds under Part B of the Act are used to pay the excess costs of providing special education and related services.

Section 602(8) of the Act and §300.16 require the LEA to compute the minimum average amount separately for children with disabilities in its elementary schools and for children with disabilities in its secondary schools. LEAs may not compute the minimum average amount it must spend on the education of children with disabilities based on a combination of the enrollments in its elementary schools and secondary schools.

The following example shows how to compute the minimum average amount an LEA must spend for the education of each of its elementary school children with disabilities under section 602(3) of the Act before it may use funds under Part B of the Act.

- a. First the LEA must determine the total amount of its expenditures for elementary school students from all sources—local, State, and Federal (including Part B)—in the preceding school year. Only capital outlay and debt services are excluded.

Example: The following is an example of a computation for children with disabilities enrolled in an LEA's elementary schools. In this example, the LEA had an average elementary school enrollment for the preceding school year of 800 (including 100 children with disabilities). The LEA spent the following amounts last year for elementary school students (including its elementary school children with disabilities):

(1)	From State and local tax funds.	\$6,500,000
(2)	From Federal funds	600,000
	Total expenditures	7,100,000

Of this total, \$60,000 was for capital outlay and debt service relating to the education of elementary school students. This must be subtracted from total expenditures.

(1)	Total Expenditures	\$7,100,000
(2)	Less capital outlay and debt	- 60,000
	Total expenditures for elementary students less capital layout and debt	\$7,040,000

- b. Next, the LEA must subtract from the total expenditures amounts spent for:

- (1) IDEA, Part B allocation,
- (2) ESEA, Title I, Part A allocation,
- (3) ESEA, Title III, Parts A and B allocation,
- (4) State and local funds for children with disabilities, and
- (5) State or local funds for programs under ESEA, Title I, Part A, and Title III, Parts A and B.

These are funds that the LEA actually spent, not funds received last year but carried over for the current school year.

Example: The LEA spent the following amounts for elementary school students last year:

(1)	From funds under IDEA, Part B allocation	\$200,000
(2)	From funds under ESEA, Title I, Part A allocation	250,000
(3)	From funds under ESEA, Title III, Parts A and B allocation	50,000
(4)	From State funds and local funds for children with disabilities	500,000
(5)	From State and local funds for programs under ESEA, Title I, Part A, and Title III, Parts A and B	150,000
	Total	1,150,000
(1)	Total expenditures less capital layout and debt	7,040,000
(2)	Other deductions	-1,150,000
	Total	\$5,890,000

- c. Except as otherwise provided, the LEA next must determine the average annual per student expenditure for its elementary schools dividing the average number of students enrolled in the elementary schools of the agency during the preceding year (including its children with disabilities) into the amount computed under the above paragraph. The amount obtained through this computation is the minimum amount the LEA must spend (on the average) for the education of each of its elementary school children with disabilities. Funds under Part B of the Act may be used only for costs over and above this minimum.

(1)	Amount from Step b	\$5,890,000
(2)	Average number of students enrolled	800
(3)	$\$5,890,000/800$ Average annual per student expenditure	\$7,362

Appendix A to Part 300—Excess Costs Calculation

- d. Except as otherwise provided, to determine the total minimum amount of funds the LEA must spend for the education of its elementary school children with disabilities in the LEA (not including capital outlay and debt service), the LEA must multiply the number of elementary school children with disabilities in the LEA times the average annual per student expenditure obtained in paragraph c above. Funds under Part B of the Act can only be used for excess costs over and above this minimum.

(1)	Number of children with disabilities in the LEA's elementary schools	100
(2)	Average annual per student expenditure	\$7,362
(3)	\$7,362 x 100	
	Total minimum amount of funds the LEA must spend for the education of children with disabilities enrolled in the LEA's elementary schools before using Part B funds.	\$736,200

Last Amended: 71 FR 46813, Aug. 14, 2006

Appendix B to Part 300—Proportionate Share Calculation

Each LEA must expend, during the grant period, on the provision of special education and related services for the parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA an amount that is equal to—

- (1) A proportionate share of the LEA's subgrant under section 611(f) of the Act for children with disabilities aged 3 through 21. This is an amount that is the same proportion of the LEA's total subgrant under section 611(f) of the Act as the number of parentally-placed private school children with disabilities aged 3 through 21 enrolled in private elementary schools and secondary schools located in the LEA is to the total number of children with disabilities enrolled in public and private elementary schools and secondary schools located in the LEA aged 3 through 21; and
- (2) A proportionate share of the LEA's subgrant under section 619(g) of the Act for children with disabilities aged 3 through 5. This is an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the total number of parentally-placed private school children with disabilities aged 3 through 5 enrolled in private elementary schools located in the LEA is to the total number of children with disabilities enrolled in public and private elementary schools located in the LEA aged 3 through 5.

Consistent with section 612(a)(10)(A)(i) of the Act and §300.133 of these regulations, annual expenditures for parentally-placed private school children with disabilities are calculated based on the total number of children with disabilities enrolled in public and private elementary schools and secondary schools located in the LEA eligible to receive special education and related services under Part B, as compared with the total number of eligible parentally-placed private school children with disabilities enrolled in private elementary schools located in the LEA. This ratio is used to determine the proportion of the LEA's total Part B subgrants under section 611(f) of the Act for children aged 3 through 21, and under section 619(g) of the Act for children aged 3 through 5, that is to be expended on services for parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA.

The following is an example of how the proportionate share is calculated:

There are 300 eligible children with disabilities enrolled in the Flintstone School District and 20 eligible parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA for a total of 320 eligible public and private school children with disabilities (note: proportionate share for parentally-placed private school children is based on total children eligible, not children served). The number of eligible parentally-placed private school children with disabilities (20) divided by the total number of eligible public and private school children with disabilities (320) indicates that 6.25 percent of the LEA's subgrant must be spent for the group of eligible parentally-placed children with disabilities enrolled in private elementary schools and secondary schools located in the LEA. Flintstone School District receives \$152,500 in Federal flow through funds. Therefore, the LEA must spend \$9,531.25 on special education or related services to the group of parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA. (Note: The LEA must calculate the proportionate share of IDEA funds before earmarking funds for any early intervening activities in §300.226).

The following outlines the calculations for the example of how the proportionate share is calculated.

Proportionate Share Calculation for Parentally Placed Private School Children with Disabilities For Flintstone School District:	
Number of eligible children with disabilities in public schools in the LEA	300
Number of parentally-placed eligible children with disabilities in private elementary schools and secondary schools located in the LEA	20
Total number of eligible children	320
Federal Flow-Through funds to Flintstone School District	
Total allocation to Flintstone	\$152,500
Calculating Proportionate Share:	
Total allocation to Flintstone	152,500
Divided by total number of eligible children	320
Average allocation per eligible child	476.5625
Multiplied by the number of parentally placed children with disabilities	20
Amount to be expended for parentally-placed children with disabilities	9,531.25

Last Amended: 71 FR 46814, Aug. 14, 2006

Appendix C to Part 300—National Instructional Materials Accessibility Standard (NIMAS)

Under sections 612(a)(23)(A) and 674(e)(4) of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004, the Secretary of Education establishes the NIMAS. Under section 674(e)(4) of the Act, the NIMAS applies to print instructional materials published after July 19, 2006. The purpose of the NIMAS is to help increase the availability and timely delivery of print instructional materials in accessible formats to blind or other persons with print disabilities in elementary and secondary schools.

Technical Specifications—The Baseline Element Set

The Baseline Element Set details the minimum requirement that must be delivered to fulfill the NIMAS. It is the responsibility of publishers to provide this NIMAS-conformant XML content file, a package file (OPF), a PDF-format copy of the title page (or whichever page(s) contain(s) ISBN and copyright information), and a full set of the content's images. All of the images included within a work must be provided in a folder and placeholders entered in the relevant XML document indicating their location (all images must be included). The preferred image type is SVG, next is either PNG or JPG format. Images should be rendered in the same size/proportion as their originals at 300 dpi. Images should be named with relative path filenames in XML files (example: `img id="staricon4" src="/images/U10C02/staricon4.jpg" alt="star icon"`).

NIMAS-conformant content must be valid to the NIMAS 1.1 [see ANSI/NISO Z39.86 2005 or subsequent revisions]. In addition, files are required to use the tags from the Baseline Element Set when such tags are appropriate. Publishers are encouraged to augment the required Baseline Element Set with tags from the Optional Element Set (elements not included in the Standard) as applicable. For the purposes of NIMAS, appropriate usage of elements, both baseline and optional, is defined by the DAISY Structure Guidelines. Files that do not follow these guidelines in the selection and application of tags are not conformant to this Standard. Both optional elements and appropriate structure guidelines may be located within Z39.86–2002 and Z39.86–2005 available from <http://www.daisy.org/z3986/>. Use of the most current standard is recommended.

Technical Specifications—The Baseline Element Set

Element	Description
a. Document-level tags	
dtbook	The root element in the Digital Talking Book DTD. <dtbook> contains metadata in <head> and the contents itself in <book>.
head	Contains metainformation about the book but no actual content of the book itself, which is placed in <book>.
book	Surrounds the actual content of the document, which is divided into <frontmatter>, <bodymatter>, and <rearmatter>. <head>, which contains metadata, precedes <book>.
meta	Indicates metadata about the book. It is an empty element that may appear repeatedly only in <head>. For the most current usage guidelines, please refer to http://www.daisy.org/z3986/
b. Structure and Hierarchy	
frontmatter	Usually contains <doctitle> and <docauthor>, as well as preliminary material that is often enclosed in appropriate <level> or <level1> etc. Content may include a copyright notice, a foreword, an acknowledgements section, a table of contents, etc. <frontmatter> serves as a guide to the content and nature of a <book>.
bodymatter	Consists of the text proper of a book, as contrasted with preliminary material <frontmatter> or supplementary information in <rearmatter>.
rearmatter	Contains supplementary material such as appendices, glossaries, bibliographies, and indices. It follows the <bodymatter> of the book.
level1	The highest-level container of major divisions of a book. Used in <frontmatter>, <bodymatter>, and <rearmatter> to mark the largest divisions of the book (usually parts or chapters), inside which <level2> subdivisions (often sections) may nest. The class attribute identifies the actual name (e.g., part, chapter) of the structure it marks. Contrast with <level>.
level2	Contains subdivisions that nest within <level1> divisions. The class attribute identifies the actual name (e.g., subpart, chapter, subsection) of the structure it marks.
level3	Contains sub-subdivisions that nest within <level2> subdivisions (e.g., sub-subsections within subsections). The class attribute identifies the actual name (e.g., section, subpart, subsection) of the subordinate structure it marks.
level4	Contains further subdivisions that nest within <level3> subdivisions. The class attribute identifies the actual name of the subordinate structure it marks.
level5	Contains further subdivisions that nest within <level4> subdivisions. The class attribute identifies the actual name of the subordinate structure it marks.
level6	Contains further subdivisions that nest within <level5> subdivisions. The class attribute identifies the actual name of the subordinate structure it marks.
h1	Contains the text of the heading for a <level1> structure.
h2	Contains the text of the heading for a <level2> structure.
h3	Contains the text of the heading for a <level3> structure.
h4	Contains the text of the heading for a <level4> structure.
h5	Contains the text of the heading for a <level5> structure.
h6	Contains the text of the heading for a <level6> structure. For the most current usage guidelines, please refer to http://www.daisy.org/z3986/
c. Block elements	
author	Identifies the writer of a work other than this one. Contrast with <docauthor>, which identifies the author of this work. <author> typically occurs within <blockquote> and <cite>.
blockquote	Indicates a block of quoted content that is set off from the surrounding text by paragraph breaks. Compare with <q>, which marks short, inline quotations.

Appendix C to Part 300—National Instructional Materials Accessibility Standard (NIMAS)

Element	Description
list	Contains some form of list, ordered or unordered. The list may have an intermixed heading <hd> (generally only one, possibly with <prodnote>), and an intermixture of list items and <pagenum>. If bullets and outline enumerations are part of the print content, they are expected to prefix those list items in content, rather than be implicitly generated.
li	Marks each list item in a <list>. content may be either inline or block and may include other nested lists. Alternatively it may contain a sequence of list item components, <lic>, that identify regularly occurring content, such as the heading and page number of each entry in a table of contents.
hd	Marks the text of a heading in a <list> or <sidebar>.
note	Marks a footnote, endnote, etc. Any local reference to <note id="yyy"> is by <noteref idref="#yyy">. [Attribute id]
p	Contains a paragraph, which may contain subsidiary <list> or <dl>.
sidebar	Contains information supplementary to the main text and/or narrative flow and is often boxed and printed apart from the main text block on a page. It may have a heading <hd>.
cite	Marks a reference (or citation) to another document.
dd	Marks a definition of the preceding term <dt> within a definition list <dl>. A definition without a preceding <dt> has no semantic interpretation, but is visually presented aligned with other <dd>.
dl	Contains a definition list, usually consisting of pairs of terms <dt> and definitions <dd>. Any definition can contain another definition list.
dt	Marks a term in a definition list <dl> for which a definition <dd> follows. For the most current usage guidelines, please refer to http://www.daisy.org/z3986/
d. Inline Elements	
em	Indicates emphasis. Usually is rendered in italics. Compare with .
q	Contains a short, inline quotation. Compare with <blockquote>, which marks a longer quotation set off from the surrounding text.
strong	Marks stronger emphasis than . Visually is usually rendered bold.
sub	Indicates a subscript character (printed below a character's normal baseline). Can be used recursively and/or intermixed with <sup>.
sup	Marks a superscript character (printed above a character's normal baseline). Can be used recursively and/or intermixed with <sub>.
br	Marks a forced line break.
line	Marks a single logical line of text. Often used in conjunction with <linenum> in documents with numbered lines. [Use only when line breaks must be preserved to capture meaning (e.g., poems, legal texts).]
linenum	Contains a line number, for example in legal text. [Use only when <line> is used, and only for lines numbered in print book.]
pagenum	Contains one page number as it appears from the print document, usually inserted at the point within the file immediately preceding the first item of content on a new page. [NB: Only valid when it includes an id attribute].
noteref	Marks one or more characters that reference a footnote or endnote <note>. Contrast with <annoref>. <noteref> and <note> are independently skippable. For the most current usage guidelines, please refer to http://www.daisy.org/z3986/ .
e. Tables	
table	Contains cells of tabular data arranged in rows and columns. A <table> may have a <caption>. It may have descriptions of the columns in <col>s or groupings of several <col> in <colgroup>. A simple <table> may be made up of just rows <tr>. A long table crossing several pages of the print book should have separate <pagenum> values for each of the pages containing that <table> indicated on the page where it starts. Note the logical order of optional <thead>, optional <tfoot>, then one or more of either <tbody> or just rows <tr>. This order accommodates simple or large, complex tables. The <thead> and <tfoot> information usually helps identify content of the <tbody> rows. For a multiple-page print <table> the <thead> and <tfoot> are repeated on each page, but not redundantly tagged.
td	Indicates a table cell containing data.
tr	Marks one row of a <table> containing <th> or <td> cells. For the most current usage guidelines, please refer to http://www.daisy.org/z3986/ .
f. Images	
imggroup	Provides a container for one or more and associated <caption>(s) and <prodnote>(s). A <prodnote> may contain a description of the image. The content model allows: 1) multiple if they share a caption, with the ids of each in the <caption imgref="id1 id2 ...">; 2) multiple <caption> if several captions refer to a single where each caption has the same <caption imgref="xxx">; 3) multiple <prodnote> if different versions are needed for different media (e.g., large print, braille, or print). If several <prodnote> refer to a single , each prodnote has the same <prodnote imgref="xxx">.
img	Points to the image to be rendered. An may stand alone or be grouped using <imggroup>.
caption	Describes a <table> or . If used with <table> it must follow immediately after the <table> start tag. If used with <imggroup> it is not so constrained. For the most current usage guidelines, please refer to http://www.daisy.org/z3986/

Appendix C to Part 300—National Instructional Materials Accessibility Standard (NIMAS)

1. The Optional Elements and Guidelines for Use

Publishers are encouraged to apply markup beyond the baseline (required) elements. The complete DTBook Element Set reflects the tags necessary to create the six types of Digital Talking Books and Braille output. Because of the present necessity to subdivide the creation of alternate format materials into distinct phases, the Panel determined that baseline elements would be provided by publishers, and optional elements would be added to the NIMAS-conformant files by third party conversion entities. In both circumstances the protocols for tagging digital files should conform to the most current ANSI/NISO Z39.86 specification. Content converters are directed to the most current DAISY Structure Guidelines (<http://www.daisy.org/z3986/>) for guidance on their use.

Since the publication of the original National File Format report from which the NIMAS technical specifications were derived, ANSI/NISO Z39.86–2002 was updated and is now ANSI/NISO Z39.86–2005. It may be best to avoid using the following optional elements which are no longer included in ANSI/NISO Z39.86–2005: style, notice, hr, and levelhd.

Also, the following new elements were introduced by ANSI/NISO Z39.86–2005 and should be considered optional elements for the NIMAS: bridgehead, byline, covertitle, dateline, epigraph, linegroup, and poem. Please refer to ANSI/NISO Z39.86–2005 for additional information regarding these elements. To access the ANSI/NISO Z39.86–2005 specification, go to <http://www.daisy.org/z3986/>.

2. Package File

A package file describes a publication. It identifies all other files in the publication and provides descriptive and access information about them. A publication must include a package file conforming to the NIMAS. The package file is based on the Open eBook Publication Structure 1.2 package file specification (For most recent detail please see <http://www.openebook.org/oebps/oebps1.2/download/oeb12-xhtml.htm#sec2>). A NIMAS package file must be a valid XML OeBPS 1.2 package file instance and must meet the following additional standards:

The NIMAS Package File must include the following Dublin Core (dc:) metadata:

dc:Title.
dc:Creator (if applicable).
dc:Publisher.
dc>Date (Date of NIMAS-compliant file creation—yyyy-mm-dd).
dc:Format (“NIMAS 1.0”).
dc:Identifier (a unique identifier for the NIMAS-compliant digital publication, e.g., print ISBN + “-NIMAS”—exact format to be determined).
dc:Language (one instance, or multiple in the case of a foreign language textbook, etc.).
dc:Rights (details to be determined).
dc:Source (ISBN of print version of textbook).

And the following x-metadata items:

nimas-SourceEdition (the edition of the print textbook).
nimas-SourceDate (date of publication of the print textbook).

The following metadata were proposed also as a means of facilitating recordkeeping, storage and file retrieval:

dc:Subject (Language Arts, Social Studies, etc.).
nimas-grade (specific grade level of the print textbook, e.g.; Grade 6).
nimas gradeRange (specific grade range of the print textbook, e.g.; Grades 4–5).

An additional suggestion references the use of:

dc:audience:educationLevel (for the grade and gradeRange identifiers, noting that Dublin Core recommends using educationLevel with an appropriate controlled vocabulary for context, and recommends the U.S. Department of Education’s Level of Education vocabulary online at <http://www.ed.gov/admin/reference/index.jsp>. Using educationLevel obviates the need for a separate field for gradeRange since dc elements can repeat more than once. A book used in more than one grade would therefore have two elements, one with value “Grade 4” and another with value “Grade 5.”

A final determination as to which of these specific metadata elements to use needs to be clarified in practice. The package manifest must list all provided files (text, images, etc.).

(Note: For purposes of continuity and to minimize errors in transformation and processing, the NIMAS-compliant digital text should be provided as a single document.)

3. Modular Extensions

The most current DAISY/NISO standard, formally the *ANSI/NISO Z39.86, Specifications for the Digital Talking Book* defines a comprehensive system for creating Digital Talking Books. A part of this standard is DTBook, an XML vocabulary that provides a core set of elements needed to produce most types of books. However, DTBook is not intended to be an exhaustive vocabulary for all types of books.

Guidelines for the correct approach to extend the DAISY/NISO standard have been established. Mathematics, video support, testing, workbooks, music, dictionaries, chemistry, and searching are some of the extensions that have been discussed. Visit <http://www.daisy.org/z3986/> to learn more about modular extensions.

Last Amended: 71 FR 46814, Aug. 14, 2006

Appendix D to Part 300—Maintenance of Effort and Early Intervening Services

LEAs that seek to reduce their local maintenance of effort in accordance with §300.205(d) and use some of their Part B funds for early intervening services under § 300.226 must do so with caution because the local maintenance of effort reduction provision and the authority to use Part B funds for early intervening services are interconnected. The decisions that an LEA makes about the amount of funds that it uses for one purpose affect the amount that it may use for the other. Below are examples that illustrate how §§ 300.205(d) and 300.226(a) affect one another.

Example 1: In this example, the amount that is 15 percent of the LEA's total grant (see §300.226(a)), which is the maximum amount that the LEA may use for early intervening services (EIS), is greater than the amount that may be used for local maintenance of effort (MOE) reduction (50 percent of the increase in the LEA's grant from the prior year's grant) (see §300.205(a)).

Prior Year's Allocation	\$900,000
Current Year's Allocation	1,000,000
Increase	100,000
Maximum Available for MOE Reduction	50,000
Maximum Available for EIS	150,000

If the LEA chooses to set aside \$150,000 for EIS, it may not reduce its MOE (MOE maximum \$50,000 less \$150,000 for EIS means \$0 can be used for MOE).

If the LEA chooses to set aside \$100,000 for EIS, it may not reduce its MOE (MOE maximum \$50,000 less \$100,000 for EIS means \$0 can be used for MOE).

If the LEA chooses to set aside \$50,000 for EIS, it may not reduce its MOE (MOE maximum \$50,000 less \$50,000 for EIS means \$0 can be used for MOE).

If the LEA chooses to set aside \$30,000 for EIS, it may reduce its MOE by \$20,000 (MOE maximum \$50,000 less \$30,000 for EIS means \$20,000 can be used for MOE).

If the LEA chooses to set aside \$0 for EIS, it may reduce its MOE by \$50,000 (MOE maximum \$50,000 less \$0 for EIS means \$50,000 can be used for MOE).

Example 2: In this example, the amount that is 15 percent of the LEA's total grant (see §300.226(a)), which is the maximum amount that the LEA may use for EIS, is less than the amount that may be used for MOE reduction (50 percent of the increase in the LEA's grant from the prior year's grant) (see §300.205(a)).

Prior Year's Allocation	\$1,000,000
Current Year's Allocation	2,000,000
Increase	1,000,000
Maximum Available for MOE Reduction	500,000
Maximum Available for EIS	300,000

If the LEA chooses to use no funds for MOE, it may set aside \$300,000 for EIS (EIS maximum \$300,000 less \$0 means \$300,000 for EIS).

If the LEA chooses to use \$100,000 for MOE, it may set aside \$200,000 for EIS (EIS maximum \$300,000 less \$100,000 means \$200,000 for EIS).

If the LEA chooses to use \$150,000 for MOE, it may set aside \$150,000 for EIS (EIS maximum \$300,000 less \$150,000 means \$150,000 for EIS).

If the LEA chooses to use \$300,000 for MOE, it may not set aside anything for EIS (EIS maximum \$300,000 less \$300,000 means \$0 for EIS).

If the LEA chooses to use \$500,000 for MOE, it may not set aside anything for EIS (EIS maximum \$300,000 less \$500,000 means \$0 for EIS).

Last Amended: 71 FR 46817, Aug. 14, 2006

Appendix E to Part 300—Local Educational Agency Maintenance of Effort Calculation Examples

The following tables provide examples of calculating LEA MOE. Figures are in \$10,000s. All references to a “fiscal year” in these tables refer to the fiscal year covering that school year, unless otherwise noted.

Tables 1 through 4 provide examples of how an LEA complies with the Subsequent Years rule. In Table 1, for example, an LEA spent \$1 million in Fiscal Year (FY) 2012-2013 on the education of children with disabilities. In the following year, the LEA was required to spend at least \$1 million but spent only \$900,000. In FY 2014-2015, therefore, the LEA was required to spend \$1 million, the amount it was required to spend in FY 2013-2014, not the \$900,000 it actually spent.

Table 1—Example of Level of Effort Required To Meet MOE Compliance Standard in Year Following a Year in Which LEA Failed To Meet MOE Compliance Standard

Fiscal year	Actual level of effort	Required level of effort	Notes
2012-2013	\$100	\$100	LEA met MOE.
2013-2014	90	100	LEA did not meet MOE.
2014-2015		100	Required level of effort is \$100 despite LEA's failure in 2013-2014.

Table 2 shows how to calculate the required amount of effort when there are consecutive fiscal years in which an LEA does not meet MOE.

Table 2—Example of Level of Effort Required To Meet MOE Compliance Standard in Year Following Consecutive Years in Which LEA Failed To Meet MOE Compliance Standard

Fiscal year	Actual level of effort	Required level of effort	Notes
2012-2013	\$100	\$100	LEA met MOE.
2013-2014	90	100	LEA did not meet MOE.
2014-2015	90	100	LEA did not meet MOE. Required level of effort is \$100 despite LEA's failure in 2013-2014.
2015-2016		100	Required level of effort is \$100 despite LEA's failure in 2013-2014 and 2014-2015.

Table 3 shows how to calculate the required level of effort in a fiscal year after the year in which an LEA spent more than the required amount on the education of children with disabilities. This LEA spent \$1.1 million in FY 2015-2016 though only \$1 million was required. The required level of effort in FY 2016-2017, therefore, is \$1.1 million.

Table 3—Example of Level of Effort Required To Meet MOE Compliance Standard in Year Following Year in Which LEA Met MOE Compliance Standard

Fiscal year	Actual level of effort	Required level of effort	Notes
2012-2013	\$100	\$100	LEA met MOE.
2013-2014	90	100	LEA did not meet MOE.
2014-2015	90	100	LEA did not meet MOE. Required level of effort is \$100 despite LEA's failure in 2013-2014.
2015-2016	110	100	LEA met MOE.
2016-2017		110	Required level of effort is \$110 because LEA expended \$110, and met MOE, in 2015-2016.

Table 4 shows the same calculation when, in an intervening fiscal year, 2016-2017, the LEA did not maintain effort.

Table 4—Example of Level of Effort Required To Meet MOE Compliance Standard in Year Following Year in Which LEA Did Not Meet MOE Compliance Standard

Fiscal year	Actual level of effort	Required level of effort	Notes
2012-2013	\$100	\$100	LEA met MOE.
2013-2014	90	100	LEA did not meet MOE.
2014-2015	90	100	LEA did not meet MOE. Required level of effort is \$100 despite LEA's failure in 2013-2014.
2015-2016	110	100	LEA met MOE.
2016-2017	100	110	LEA did not meet MOE. Required level of effort is \$110 because LEA expended \$110, and met MOE, in 2015-2016.
2017-2018		110	Required level of effort is \$110, despite LEA's failure in 2016-2017.

Table 5 provides an example of how an LEA may meet the compliance standard using alternate methods from year to year without using the exceptions or adjustment in §§300.204 and 300.205, and provides information on the following scenario. In FY 2015-2016, the LEA meets the compliance standard using all four methods. As a result, in order to demonstrate that it met the compliance standard using any one of the four methods in FY 2016-2017, the LEA must expend at least as much as it did in FY 2015-2016 using that same method. Because the LEA spent the same amount in FY 2016-2017 as it did in FY 2015-2016, calculated using a combination of State and local funds and a combination of State and local funds on a per capita basis, the LEA met the compliance standard using both of those methods in FY 2016-2017. However, the LEA did not meet the compliance standard in FY 2016-2017 using the other two methods—local funds only or local funds only on a per capita basis—because it did not spend at least the same amount in FY 2016-2017 as it did in FY 2015-2016 using the same methods.

Appendix E to Part 300—Local Educational Agency Maintenance of Effort Calculation Examples

Table 5—Example of How an LEA May Meet the Compliance Standard Using Alternate Methods From Year to Year

Fiscal year	Local funds only	Combination of State and local funds	Local funds only on a per capita basis	Combination of State and local funds on a per capita basis	Child count
2015-2016	*\$500	*\$950	*\$50	*\$95	10
2016-2017	400	*950	40	*95	10
2017-2018	*500	900	*50	90	10

*LEA met compliance standard using this method.

Table 6 provides an example of how an LEA may meet the compliance standard using alternate methods from year to year in years in which the LEA used the exceptions or adjustment in §§300.204 and 300.205, including using the per capita methods.

Table 6—Example of How an LEA May Meet the Compliance Standard Using Alternate Methods From Year to Year and Using Exceptions or Adjustment Under §§300.204 and 300.205

Fiscal year	Local funds only	Combination of State and local funds	Local funds only on a per capita basis	Combination of State and local funds on a per capita basis	Child count
2015- 2016	\$500*	\$950*	\$50*	\$95*	10
2016- 2017	400	950*	40	95*	10
2017-2018	450*	1,000*	45*	100*	10
	<p>In 2017-2018, the LEA was required to spend at least the same amount in local funds only that it spent in the preceding fiscal year, subject to the Subsequent Years rule. Therefore, prior to taking any exceptions or adjustment in §§300.204 and 300.205, the LEA was required to spend at least \$500 in local funds only</p> <p>In 2017-2018, the LEA properly reduced its expenditures, per an exception in §300.204, by \$50, and therefore, was required to spend at least \$450 in local funds only (\$500 from 2015-2016 per Subsequent Years rule – \$50 allowable reduction per an exception under §300.204)</p>		<p>In 2017-2018, the LEA was required to spend at least the same amount in local funds only on a per capita basis that it spent in the preceding fiscal year, subject to the Subsequent Years rule. Therefore, prior to taking any exceptions or adjustment in §§300.204 and 300.205, the LEA was required to spend at least \$50 in local funds only on a per capita basis</p> <p>In 2017-2018, the LEA properly reduced its aggregate expenditures, per an exception in §300.204, by \$50 \$50/10 children with disabilities in the comparison year (2015-2016) = \$5 per capita allowable reduction per an exception under §300.204</p> <p>\$50 local funds only on a per capita basis (from 2015-2016 per Subsequent Years rule) – \$5 allowable reduction per an exception under §300.204 = \$45 local funds only on a per capita basis to meet MOE</p>		
2018-2019	405	1,000*	45*	111.11*	9
	<p>In 2018-2019, the LEA was required to spend at least the same amount in local funds only that it spent in the preceding fiscal year, subject to the Subsequent Years rule. Therefore, prior to taking any exceptions or adjustment in §§300.204 and 300.205, the LEA was required to spend at least \$450 in local funds only</p> <p>In 2018-2019, the LEA properly reduced its expenditures, per an exception in §300.204 by \$10 and the adjustment in §300.205 by \$10</p>	<p>Because the LEA did not reduce its expenditures from the comparison year (2017-2018) using a combination of State and local funds, the LEA met MOE</p>	<p>In 2018-2019, the LEA was required to spend at least the same amount in local funds only on a per capita basis that it spent in the preceding fiscal year, subject to the Subsequent Years rule. Therefore, prior to taking any exceptions or adjustment in §§300.204 and 300.205, the LEA was required to spend at least \$45 in local funds only on a per capita basis</p> <p>In 2018-2019, the LEA properly reduced its aggregate expenditures, per an exception in §300.204 by \$10 and the adjustment in §300.205 by \$10</p>	<p>Because the LEA did not reduce its expenditures from the comparison year (2017-2018) using a combination of State and local funds on a per capita basis (\$1,000/9 =</p>	

Appendix E to Part 300—Local Educational Agency Maintenance of Effort Calculation Examples

Fiscal year	Local funds only	Combination of State and local funds	Local funds only on a per capita basis	Combination of State and local funds on a per capita basis	Child count
	Therefore, the LEA was required to spend at least \$430 in local funds only. (\$450 from 2017-2018 – \$20 allowable reduction per an exception and the adjustment under §§300.204 and 300.205)		<p>\$20/10 children with disabilities in the comparison year (2017-2018) = \$2 per capita allowable reduction per an exception and the adjustment under §§300.204 and 300.205</p> <p>\$45 local funds only on a per capita basis (from 2017-2018) – \$2 allowable reduction per an exception and the adjustment under §§300.204 and 300.205 = \$43 local funds only on a per capita basis required to meet MOE. Actual level of effort is \$405/9 (the current year child count)</p>	\$111.11 and \$111.11 > \$100), the LEA met MOE	

*LEA met MOE using this method.

Note: When calculating any exception(s) and/or adjustment on a per capita basis for the purpose of determining the required level of effort, the LEA must use the child count from the comparison year, and not the child count of the year in which the LEA took the exception(s) and/or adjustment. When determining the actual level of effort on a per capita basis, the LEA must use the child count for the current year. For example, in 2018-2019, the LEA uses a child count of 9, not the child count of 10 in the comparison year, to determine the actual level of effort.

Tables 7 and 8 demonstrate how an LEA could meet the eligibility standard over a period of years using different methods from year to year. These tables assume that the LEA did not take any of the exceptions or adjustment in §§300.204 and 300.205. Numbers are in \$10,000s budgeted and spent for the education of children with disabilities.

Table 7—Example of How an LEA May Meet the Eligibility Standard in 2016-2017 Using Different Methods

Fiscal year	Local funds only	Combination of State and local funds	Local funds only on a per capita basis	Combination of State and local funds on a per capita basis	Child count	Notes
2014-2015	*\$500	*\$1,000	*\$50	*\$100	10	The LEA met the compliance standard using all 4 methods.*
2015-2016						Final information not available at time of budgeting for 2016-2017.
How much must the LEA budget for 2016-2017 to meet the eligibility standard in 2016-2017?	500	1,000	50	100		When the LEA submits a budget for 2016-2017, the most recent fiscal year for which the LEA has information is 2014-2015. It is not necessary for the LEA to consider information on expenditures for a fiscal year prior to 2014-2015 because the LEA maintained effort in 2014-2015. Therefore, the Subsequent Years rule in §300.203(c) is not applicable.

*The LEA met the compliance standard using all 4 methods.

Table 8—Example of How an LEA May Meet the Eligibility Standard in 2017-2018 Using Different Methods and the Application of the Subsequent Years Rule

Fiscal year	Local funds only	Combination of State and local funds	Local funds only on a per capita basis	Combination of State and local funds on a per capita basis	Child count	Notes
2014-2015	*\$500	*\$1,000	*\$50	*\$100	10	
2015-2016	450	*1,000	45	*100	10	
2016-2017						Final information not available at time of budgeting for 2017-2018.
How much must the LEA budget	500	1,000	50	100		If the LEA seeks to use a combination of State and local funds, or a combination of State and local funds on a per capita basis, to meet the eligibility standard, the LEA does not consider

Appendix E to Part 300—Local Educational Agency Maintenance of Effort Calculation Examples

Fiscal year	Local funds only	Combination of State and local funds	Local funds only on a per capita basis	Combination of State and local funds on a per capita basis	Child count	Notes
for 2017-2018 to meet the eligibility standard in 2017-2018?						information on expenditures for a fiscal year prior to 2015-2016 because the LEA maintained effort in 2015-2016 using those methods.
						However, if the LEA seeks to use local funds only, or local funds only on a per capita basis, to meet the eligibility standard, the LEA must use information on expenditures for a fiscal year prior to 2015-2016 because the LEA did not maintain effort in 2015-2016 using either of those methods, per the Subsequent Years rule. That is, the LEA must determine what it should have spent in 2015-2016 using either of those methods, and that is the amount that the LEA must budget in 2017-2018.

*LEA met MOE using this method.

Table 9 provides an example of how an LEA may consider the exceptions and adjustment in §§300.204 and 300.205 when budgeting for the expenditures for the education of children with disabilities.

Table 9—Example of How an LEA May Meet the Eligibility Standard Using Exceptions and Adjustment in §§300.204 and 300.205, 2016-2017

Fiscal year	Local funds only	Combination of State and local funds	Local funds only on a per capita basis	Combination of State and local funds on a per capita basis	Child count	Notes
Actual 2014-2015 expenditures	*\$500	*\$1,000	*\$50	*\$100	10	The LEA met the compliance standard using all 4 methods.*
Exceptions and adjustment taken in 2015-2016	-50	-50	-5	-5		LEA uses the child count number from the comparison year (2014-2015).
Exceptions and adjustment the LEA reasonably expects to take in 2016-2017	-25	-25	-2.50	-2.50		LEA uses the child count number from the comparison year (2014-2015).
How much must the LEA budget to meet the eligibility standard in 2016-2017?	425	925	42.50	92.50		When the LEA submits a budget for 2016-2017, the most recent fiscal year for which the LEA has information is 2014-2015. However, if the LEA has information on exceptions and adjustment taken in 2015-2016, the LEA may use that information when budgeting for 2016-2017. The LEA may also use information that it has on any exceptions and adjustment it reasonably expects to take in 2016-2017 when budgeting for that year.

Table 10 provides examples both of how to calculate the amount by which an LEA failed to maintain its level of expenditures and of the amount of non-Federal funds that an SEA must return to the Department on account of that failure.

Appendix E to Part 300—Local Educational Agency Maintenance of Effort Calculation Examples

Table 10—Example of How To Calculate the Amount of an LEA's Failure to Meet the Compliance Standard in 2016-2017 and the Amount That an SEA Must Return to the Department

Fiscal year	Local funds only	Combination of State and local funds	Local funds only on a per capita basis	Combination of State and local funds on a per capita basis	Child count	Amount of IDEA Part B subgrant
2015-2016	*\$500	*\$950	\$50*	\$95*		Not relevant.
2016-2017	400	750	40	75	10	\$50
Amount by which an LEA failed to maintain its level of expenditures in 2016-2017	100	200	100 (the amount of the failure equals the amount of the per capita shortfall (\$10) times the number of children with disabilities in 2016-2017 (10))	200 (the amount of the failure equals the amount of the per capita shortfall (\$20) times the number of children with disabilities in 2016-2017 (10))		

The SEA determines that the amount of the LEA's failure is \$100 using the calculation method that results in the lowest amount of a failure. The SEA's liability is the lesser of the four calculated shortfalls and the amount of the LEA's Part B subgrant in the fiscal year in which the LEA failed to meet the compliance standard. In this case, the SEA must return \$50 to the Department because the LEA's IDEA Part B subgrant was \$50, and that is the lower amount.

*LEA met MOE using this method.

Last Amended: 80 FR 23667, Apr. 28, 2015

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Embedded links added by Legal Framework project for ease of document navigation.

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