# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 355. REIMBURSEMENT RATES

### SUBCHAPTER J. PURCHASED HEALTH SERVICES

### DIVISION 4. MEDICAID HOSPITAL SERVICES

#### 1 TAC §355.8070

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.8070, concerning Hospital Augmented Reimbursement Program (HARP).

Section 355.8070 is adopted without changes to the proposed text as published in the August 7, 2026, issue of the *Texas Register* (51 TexReg 5040). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment to §355.8070 establishes a calculation that allows any unused HARP payment room to be distributed to other eligible hospitals within the same class based on an allocation proportionate to the remaining Medicaid charges that exceed all Medicaid payments, including supplemental payments and the portion of HARP payments attributable to the inpatient fee-for-service (FFS) Medicare payment gap.

A previous amendment to §355.8070, related to the HARP program, was adopted and effective on April 2, 2025. That amendment added the Centers for Medicare & Medicaid Services (CMS) definition of a nominal charge provider and clarified that the payment methodology for HARP payments will limit inpatient Medicaid payments, so they do not exceed inpatient Medicaid charges for all providers, except those that meet the Medicare definition of a nominal charge provider.

This amendment establishes a mechanism to distribute any unused payment room after the limitation is applied to other eligible hospitals within the same class. This amendment also includes edits to correct grammar and punctuation, spell out acronyms for clarity, and reorganize parts where necessary.

COMMENTS

The 14-day comment period ended on August 21, 2026.

HHSC received comments regarding the proposed rule from four commenters. HHSC received comments from Teaching Hospitals of Texas (THOT), Medical Center Health System, Parkland Health, and the Texas Hospital Association (THA). A summary of comments relating to the rule and HHSC's responses follow.

Comment: Multiple commenters supported the rule amendment to distribute unused HARP payment capacity to other eligible hospitals within the same hospital class. The commenters stated that it is a reasonable and efficient amendment to the existing HARP methodology and that redistribution based on each eligible hospital's excess inpatient Medicaid fee-for-service charges is fair and administratively practical.

Response: HHSC appreciates the supportive comments. No revision to the rule was made in response to these comments.

Comment: A commenter supported the rule amendment and recommended spelling out payment methodologies for classes of hospitals that do not currently receive HARP, such as private institutions for mental diseases (IMDs), state government-owned hospitals, and state-government-owned IMDs.

Response: HHSC appreciates the comment and understands the desire to expand and include this payment methodology to the listed HARP provider classes. However, these additional hospital classes have not yet been approved by CMS for HARP supplemental payments and are not eligible for the program at this time. No revision to the rule was made in response to the comment.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §532.0051, which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §532.0057(a), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code Chapter 32.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 11, 2026.

TRD-202603949

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Effective date: October 1, 2026
Proposal publication date: August 7, 2026
For further information, please call: (512) 487-3480

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# TITLE 19. EDUCATION

## PART 2. TEXAS EDUCATION AGENCY

## CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

### SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING SPECIAL EDUCATION SERVICES

The Texas Education Agency (TEA) adopts amendments to §§89.1005, 89.1040, 89.1075, 89.1121, and 89.1125; the repeal of §89.1092 and §89.1094; and new §89.1092 and §89.1094, concerning special education services. The amendments to §§89.1005, 89.1121, and 89.1125 and the repeal of §89.1092 and §89.1094 are adopted without changes to the proposed text as published in the May 15, 2026 issue of the *Texas Register* (51 TexReg 3189) and will not be republished. The amendments to §89.1040 and §89.1075 and new §89.1092 and §89.1094 are adopted with changes to the proposed text as published in the May 15, 2026 issue of the *Texas Register* (51 TexReg 3189) and will be republished. The adopted revisions clarify and align requirements related to instructional arrangements, eligibility and placement, general program operations, and the distribution and allowable use of state special education funds and update approval, oversight, reporting, and funding requirements for residential and day placement programs to align with House Bill (HB) 2 and Senate Bill (SB) 568, 89th Texas Legislature, Regular Session, 2025.

REASONED JUSTIFICATION: The adopted amendment to §89.1005 updates provisions governing instructional arrangements and educational environments to align with the revised state special education funding framework enacted by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025. The adopted amendment updates terminology, clarifies transition-period reporting requirements, and specifies how admission, review, and dismissal (ARD) committee placement decisions are reported through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) to support consistent statewide reporting under the revised funding framework.

The adopted amendment to §89.1040 updates eligibility criteria for special education and related services to support consistent statewide implementation. To improve clarity, the adopted amendment addresses evaluation procedures and eligibility determinations, including requirements for full individual and initial evaluations and reevaluations. Based on public comment, the rule text was revised at adoption to clarify standards for intellectual disability evaluations, incorporate Early Childhood Intervention (ECI) evaluations as data for developmental delay eligibility determinations, require consideration of factors that may affect the validity of assessment instruments and evaluation results, and update references from "licensed specialist in school psychology" to "school psychologist" to align with statutory changes. Together, the adopted changes strengthen consistent and accurate identification of students eligible for special education and related services across the state.

The adopted amendment to §89.1075 addresses general program requirements and local district procedures to support consistent statewide implementation. The adopted amendment updates statutory cross references, clarifies documentation and contracting requirements, revises the timeline for providing prior written notice to parents, and specifies training requirements for district transition and employment designees. Based on public comment, subsection (h) was revised at adoption to maintain the original rule text requiring at least five school days' prior written notice until July 1, 2027, allowing school systems time to transition and implement the updated requirement, while clarifying language access requirements.

New §89.1075(i) was added at adoption to implement the transition to a ten-calendar-day prior written notice requirement, beginning July 1, 2027, and subsection (j) was revised to require annual completion of training by the transition and employment designee.

Section 89.1092 is repealed and adopted as a new rule. The new rule reorganizes and clarifies requirements applicable to residential placement programs used to provide free appropriate public education (FAPE) to students with disabilities. The new language also clarifies approval, reapproval, and monitoring requirements for providers; distinguishes between ARD committee-placed and non-ARD committee-placed residential placements; and updates requirements related to contracts, onsite monitoring, notice to TEA, and funding. Funding and reporting provisions are aligned with statutory changes enacted by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, while other revisions clarify existing oversight and procedural expectations specific to residential placements.

Section 89.1094 is repealed and adopted as a new rule. The new rule revises the structure and oversight of public and private day placement programs used to provide FAPE. The new language also clarifies distinctions between district-operated, non-district-operated, and private day placement programs; refines approval, reapproval, and monitoring requirements for program administrators and providers; and updates contracting, onsite reviews, notice, and funding eligibility provisions. The provisions align day placement program requirements with HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, by reflecting the revised state special education funding framework and eligibility for the day placement allotment, while also organizing and clarifying existing administrative and procedural requirements. At adoption, subsection (h) was revised to add the term "day" for consistency with the section and to clarify that the requirements apply to day placement programs.

The adopted amendment to §89.1121 updates the distribution of state special education funds to reflect the transition from instructional arrangements to tiers and service groups in accordance with HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025. The amendment requires state special education funding to be based on assigned tiers and service groups under Texas Education Code (TEC), §48.102 and §48.1021; establishes transition-year funding for the 2026-2027 school year under TEC, §48.1022; and clarifies reporting through the Student Attendance Accounting Handbook adopted under 19 TAC §129.1025. These changes support consistent statewide implementation of the tier- and service group-based funding structure.

The adopted amendment to §89.1125 clarifies how state special education funds may be used under the revised funding framework enacted by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025. The adopted amendment specifies permissible uses of state special education funds and reinforces that such funds must be used to support special education and related services in accordance with students' individualized education program and applicable funding requirements. The adopted changes promote transparency, consistency, and compliance in the use of state special education funds.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began May 15, 2026, and ended June 15, 2026, and included public hearings on June 4 and 5, 2026. Following is a summary of public comments received and agency responses.

*§89.1005, Instructional Arrangements and Educational Environments*

Comment: The Texas Council of Administrators of Special Education (TCASE) commented in support of the proposed revisions, including the phased timeline and delayed data reporting, but raised concerns about significant implementation burdens, ongoing underfunding, and potential funding risks, requesting additional flexibility, extended hold harmless through the 2027-2028 school year, and continued guidance and support.

Response: The agency disagrees that revisions are necessary, as TEC, §48.1022, establishes the timeline for the implementation of the new funding model. The comments related to funding levels, extended hold harmless provisions, and additional flexibility are outside the scope of the proposed rulemaking.

Comment: An individual commented in support of the revisions, emphasizing the need for clear guidance, implementation tools, and stronger oversight focused on instructional quality, noting district challenges with staffing and resources.

Response: The agency agrees and will continue to provide guidance through technical assistance.

Comment: Disability Rights Texas (DRTx) recommended revising 19 TAC §89.1005(c)(1), to exclude time spent in disciplinary settings from general education placement calculations, citing concerns about service interruptions and inaccurate reporting of student access to inclusive educational settings.

Response: The agency disagrees. The rule defines a general education setting and if a disciplinary setting meets the definition, then it would be considered a general education setting under this rule.

*§89.1040, Eligibility Criteria*

Comment: The Texas Fetal Alcohol Spectrum Disorders Network and one individual recommended amending §89.1040 to explicitly include fetal alcohol spectrum disorders (FASD) under Other Health Impairment (OHI), citing inconsistent eligibility determinations, misclassification of students (including under autism), and the need for improved data accuracy, appropriate supports, and better student outcomes.

Response: The agency disagrees. Limiting FASD to OHI only may not be appropriate for educational purposes. Eligibility must remain individualized based on a student's specific needs; however, FASD may be considered under OHI in some cases.

Comment: DRTx recommended revising proposed intellectual disability eligibility criteria in §89.1040 to add safeguards to ensure eligibility determinations are based on multiple sources of individualized, evidence-based data and prohibit reliance on stereotypes or generalizations, citing concerns about misidentification.

Response: The agency agrees that eligibility determinations must be based on multiple sources of individualized data, consistent with Individuals with Disabilities Education Act (IDEA) requirements. The agency has revised the rule text in §89.1040(c)(5)(A)(ii) at adoption to clarify this standard.

Comment: DRTx recommended revising developmental delay provisions to clarify that multidisciplinary teams may consider ECI eligibility and evaluation data to support continuity of services when students transition to the public school system.

Response: The agency agrees and has revised the rule text in §89.1040(c)(13) at adoption to incorporate the use of ECI evaluations as part of the data considered for developmental delay.

Comment: The Austin/Travis County Success By 6 Coalition and Texans Care for Children commented in support of clearer developmental delay criteria but recommended stronger alignment between IDEA, Part C (ECI) and Part B, including aligning eligibility criteria, recognizing ECI evaluation data, reducing duplicative evaluations, and improving transition coordination to promote continuity of services and prevent service gaps for young children.

Response: The agency disagrees that a change is necessary at this time because the recommendation is outside the scope of this rulemaking. However, the agency will continue to collaborate with the Health and Human Services Commission, which administers IDEA, Part C, and other stakeholders to discuss the need for any future amendments that may be proposed on this topic.

Comment: The Texas Association of School Psychologists supported the proposed revisions but requested clarification of the developmental delay age range, additional safeguards to prevent misidentification of emergent bilingual students under intellectual disability criteria, and updates to reflect the statutory title change from "licensed specialist in school psychology" to "school psychologist."

Response: The agency agrees in part and disagrees in part. The agency has revised the rule text at adoption to reflect the statutory change in title from "licensed specialist in school psychology" to "school psychologist." The agency disagrees that revisions are necessary regarding the age range for developmental delay, as the proposed rule is consistent with applicable state and federal requirements. The agency will provide clarification through technical assistance regarding the identification of emergent bilingual students to support appropriate evaluation and eligibility determinations.

Comment: An individual raised concerns about the proposed intellectual disability and visual impairment eligibility criteria, citing risks of misidentification for students with sensory, communication, motor, neurological, and developmental disabilities and recommended stronger requirements to consider access needs, multidisciplinary evaluation, and reduced reliance on medical diagnosis for visual impairment eligibility.

Response: The agency disagrees that additional amendments are necessary at this time. However, the agency intends to seek additional stakeholder feedback regarding the eligibility criteria, and will consider protentional future revisions to the rule text based on that feedback.

*§89.1075, General Program Requirements and Local District Procedures*

Comment: TCASE opposed extending the prior written notice timeline from five school days to ten calendar days, citing potential delays in admission, review, and dismissal meetings and service implementation, reduced flexibility, and risks of outdated individualized education programs and recommended maintaining the current timeline or allowing flexibility by mutual agreement.

Response: The agency disagrees that the timeline should remain at five school days because a ten-calendar-day timeline better supports meaningful parent participation. However, based on public comment, implementation of the ten-calendar-day requirement has been delayed until July 1, 2027, to allow school systems time to prepare for the change.

## DIVISION 1. GENERAL PROVISIONS

### 19 TAC §89.1005

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §29.001, as amended by House Bill (HB) 2 and Senate Bill (SB) 568, 89th Texas Legislature, Regular Session, 2025, which establishes criteria for the implementation of special education law; TEC, §29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which requires the agency to develop eligibility criteria for students receiving special education services; TEC, §29.004, which establishes criteria for a full individual and initial evaluation; TEC, §29.008, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes contracts for services to students with disabilities in a residential or day placement program; TEC, §29.011, which establishes transition planning; TEC, §29.026, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes rulemaking authority for the commissioner as necessary to implement TEC, Chapter 29, Subchapter A; TEC, §48.102, as amended by HB 2, 89th Texas Legislature, Regular Session, 2025, which establishes the funding framework for students receiving special education services under the Foundation School Program; TEC, §48.1021, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes special education service groups used in determining funding under the Foundation School Program; TEC, §48.1022, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes special education transition year funding; TEC, §48.304, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes day placement program or cooperative funding; 34 CFR, §300.101, which establishes the requirement that free appropriate public education (FAPE) be available to all eligible children with disabilities; 34 CFR, §§300.114-300.118, which establish least restrictive environment requirements, including placement decisions and the provision of services in settings with nondisabled peers to the maximum extent appropriate; 34 CFR, §300.115, which requires public agencies to ensure a continuum of alternative placements is available to meet the needs of children with disabilities; 34 CFR, §300.129, which addresses the responsibilities of public agencies for children placed in or referred to private schools or facilities; 34 CFR, §300.147, which establishes state educational agency responsibilities for ensuring compliance and monitoring private school placements; 34 CFR, §§300.301-300.311, which establish requirements for evaluations, reevaluations, and eligibility determinations, including timelines and evaluation procedures; and 34 CFR, §300.503, which requires public agencies to provide parents prior written notice before proposing or refusing actions related to identification, evaluation, educational placement or the provision of FAPE.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§29.001, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.004; 29.008, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.011; 29.026, as added by HB 2 and SB 568, 89th Texas Legislature, 2025; 48.102, as amended by HB 2, 89th Texas Legislature, Regular Session, 2025; 48.1021, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 48.1022, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 48.304, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; and 34 Code of Federal Regulations (CFR), §§300.101, 300.114-300.118, 300.115, 300.129, 300.147, 300.301-300.311, and 300.503.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 14, 2026.

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## DIVISION 2. CLARIFICATION OF PROVISIONS IN FEDERAL REGULATIONS

### 19 TAC §89.1040, §89.1075

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §29.001, as amended by House Bill (HB) 2 and Senate Bill (SB) 568, 89th Texas Legislature, Regular Session, 2025, which establishes criteria for the implementation of special education law; TEC, §29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which requires the agency to develop eligibility criteria for students receiving special education services; TEC, §29.004, which establishes criteria for a full individual and initial evaluation; TEC, §29.008, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes contracts for services to students with disabilities in a residential or day placement program; TEC, §29.011, which establishes transition planning; TEC, §29.026, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes rulemaking authority for the commissioner as necessary to implement TEC, Chapter 29, Subchapter A; TEC, §48.102, as amended by HB 2, 89th Texas Legislature, Regular Session, 2025, which establishes the funding framework for students receiving special education services under the Foundation School Program; TEC, §48.1021, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes special education service groups used in determining funding under the Foundation School Program; TEC, §48.1022, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes special education transition year funding; TEC, §48.304, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes day placement program or cooperative funding; 34 CFR, §300.101, which establishes the requirement that free appropriate public education (FAPE) be available to all eligible children with disabilities; 34 CFR, §§300.114-300.118, which establish least restrictive environment requirements, including placement decisions and the provision of services in settings with nondisabled peers to the maximum extent appropriate; 34 CFR, §300.115, which requires public agencies to ensure a continuum of alternative placements is available to meet the needs of children with disabilities; 34 CFR, §300.129, which addresses the responsibilities of public agencies for children placed in or referred to private schools or facilities; 34 CFR, §300.147, which establishes state educational agency responsibilities for ensuring compliance and monitoring private school placements; 34 CFR, §§300.301-300.311, which establish requirements for evaluations, reevaluations, and eligibility determinations, including timelines and evaluation procedures; and 34 CFR, §300.503, which requires public agencies to provide parents prior written notice before proposing or refusing actions related to identification, evaluation, educational placement or the provision of FAPE.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§29.001, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.004; 29.008, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.011; 29.026, as added by HB 2 and SB 568, 89th Texas Legislature, 2025; 48.102, as amended by HB 2, 89th Texas Legislature, Regular Session, 2025; 48.1021, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 48.1022, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 48.304, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; and 34 Code of Federal Regulations (CFR), §§300.101, 300.114-300.118, 300.115, 300.129, 300.147, 300.301-300.311, and 300.503.

*§89.1040. Eligibility Criteria.*

(a) Special education and related services. To be eligible to receive special education and related 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), Texas Education Code (TEC), Chapter 29, Subchapter A, 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.

(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 (ARD) 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 in its report any situations, conditions, or circumstances that might impact the validity of an evaluation instrument or assessment used in the data collection or review process, and the team must include, but is not limited to, the following:

(1) a school psychologist, an educational diagnostician, or other appropriately certified or licensed practitioner with experience and training in the area of the disability; or

(2) a licensed or certified professional for a specific eligibility category defined in subsection (c) of this section.

(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). A determination of whether a student meets the criteria for autism as stated in 34 CFR, §300.8(c)(1), cannot require that the student meets the requirements for a medical/psychological diagnosis of autism. The absence of other characteristics often associated with autism listed in 34 CFR, 300.8(c)(1), does not exclude a student from meeting eligibility as a student with autism. The team's written report of evaluation must include specific recommendations for communication, social interaction, and positive 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 subsection (c)(3) and (12) of this section:

(A) meets the eligibility criteria for a student who is deaf or hard of hearing 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 requirements for a student who is deaf or hard of hearing or for visual impairment, but the combination of such losses adversely affects the student's educational performance; or

(D) has a documented medical diagnosis of a progressive medical condition that will result in concomitant hearing and visual losses that, without the provision of special education services, will adversely affect the student's educational performance.

(3) Deaf or hard of hearing.

(A) A student who is deaf or hard of hearing is one who has been determined to meet the criteria for deafness as stated in 34 CFR, §300.8(c)(3), or for students who have a hearing impairment as stated in 34 CFR, §300.8(c)(5). The evaluation data reviewed by the multidisciplinary team in connection with the determination of a student's eligibility based on being deaf or hard of hearing must include an audiological evaluation performed by a licensed audiologist and a communication assessment completed by the multidisciplinary team. 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 hearing assistive technology.

(B) A child under three years of age meets the criteria for deaf or hard of hearing if the student's record indicates that the child is experiencing a developmental delay because of hearing loss or impairment, or the child has a physical or mental condition that has a high probability of resulting in a developmental delay and a sensory impairment, in accordance with 34 CFR, §303.21.

(4) Emotional disability. A student with an emotional disability 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 positive behavioral supports and interventions. The term emotional disability is synonymous with the term emotional disturbance and serious emotional disturbance, as these terms are used in federal or state law pertaining to students eligible for special education and related services.

(5) Intellectual disability. 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:

(A) has been determined to have significantly sub-average intellectual functioning as measured by:

*(i)* 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; or

*(ii)* the convergence of a body of evidence from multiple direct and indirect sources after an individually administered test of cognitive abilities has been attempted or completed and the multidisciplinary team determines that standardized measures of cognitive ability are invalid, inaccessible, or inappropriate and explains why they are invalid, inaccessible, or inappropriate; and

(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.

(6) Multiple disabilities.

(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), that a combination of impairments causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments, a student with multiple disabilities is one who has a combination of disabilities defined in this section and who meets all of the following conditions:

*(i)* the student's disabilities are expected to continue indefinitely; and

*(ii)* the disabilities severely impair performance in two or more of the following areas:

*(I)* psychomotor skills;

*(II)* self-care skills;

*(III)* communication;

*(IV)* social and emotional development; or

*(V)* cognition.

(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.

(C) Multiple disabilities does not include deaf-blindness.

(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). A student's eligibility based on an orthopedic impairment must include a medical diagnosis provided by a licensed physician.

(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). A student's eligibility based on other health impairment must include identification or confirmation of the student's chronic or acute health problem provided by a licensed physician, a physician assistant, or an advanced practice registered nurse with authority delegated under Texas Occupations Code, Chapter 157.

(9) Specific learning disability.

(A) Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; intellectual disability; emotional disability; or environmental, cultural, or economic disadvantage.

(B) A student with a specific learning disability is one who:

*(i)* has been determined through a variety of assessment tools and strategies to meet the criteria for a specific learning disability as stated in 34 CFR, §300.8(c)(10), in accordance with the provisions in 34 CFR, §§300.307-300.311;

*(ii)* when provided with learning experiences and instruction appropriate for the student's age or state-approved grade-level standards as indicated by performance on multiple measures such as in-class tests, grade average over time (e.g. six weeks or semester), repeated performance on progress monitoring measures, norm- or criterion-referenced tests, and statewide assessments, does not achieve adequately for the student's age or to meet state-approved grade-level standards in one or more of the following areas:

*(I)* oral expression;

*(II)* listening comprehension;

*(III)* written expression, which includes, but is not limited to, dysgraphia;

*(IV)* basic reading skill, which includes dyslexia;

*(V)* reading fluency skills, which includes dyslexia;

*(VI)* reading comprehension;

*(VII)* mathematics calculation; or

*(VIII)* mathematics problem solving;

*(iii)* meets one of the following criteria:

*(I)* does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the areas identified in clause (ii)(I)-(VIII) of this subparagraph when using a process based on the student's response to scientific, research-based intervention; or

*(II)* exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to age, state-approved grade-level standards, or intellectual development that is determined to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with 34 CFR, §300.304 and §300.305; and

*(iv)* does not meet the findings under clauses (ii) and (iii) of this subparagraph primarily as the result of:

*(I)* a visual, hearing, or motor disability;

*(II)* an intellectual disability;

*(III)* emotional disability;

*(IV)* cultural factors;

*(V)* environmental or economic disadvantage; or

*(VI)* being emergent bilingual.

(C) As part of the evaluation described in subparagraph (B) of this paragraph and 34 CFR, §§300.304-300.311, the presence of a significant variance among specific areas of cognitive function or between specific areas of cognitive function and academic achievement is not required when determining whether a student has a specific learning disability.

(D) In order to ensure that underachievement by 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, §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, which must be provided to the student's parents. Data-based documentation of repeated assessments may include, but is not limited to, intervention progress monitoring results and reports, 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.

(E) The school district must ensure that the student is observed in the student's learning environment, including the general education classroom setting, to document the student's academic performance and behavior in the areas of difficulty. In determining whether a student has a specific learning disability, the multidisciplinary team must decide to either use information from an observation in routine classroom instruction and monitoring of the student's performance that was conducted before the student was referred for an evaluation or have at least one of the members described in subsection (b) or (c)(9)(F) of this section conduct an observation of the student's academic performance in the general education classroom after the student has been referred for an evaluation and the school district has obtained parental consent consistent with 34 CFR, §300.300(a). In the case of a student of less than school age or out of school, a member described in subsection (b) or (c)(9)(F) of this section must observe the student in an environment appropriate for a student of that age.

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

*(i)* the student's general education teacher;

*(ii)* if the student does not have a general education teacher, a general education classroom teacher qualified to teach a student of his or her age; or

*(iii)* for a student of less than school age, an individual qualified by the Texas Education Agency to teach a student of his or her age.

(G) Suspicion, and the identification, of dyslexia or dysgraphia, in addition to the requirements of subparagraphs (A)-(F) of this paragraph, must include consideration of the following:

*(i)* when the specific learning disability of dyslexia is suspected or characteristics of dyslexia have been observed from a reading instrument administered under TEC, §28.0063, or a dyslexia screener under TEC, §38.003, the team established under subsections (b) and (c)(9)(F) of this section must include a professional who meets the requirements under TEC, §29.0031(b), and §74.28 of this title (relating to Students with Dyslexia and Related Disorders), including any handbook adopted in the rule;

*(ii)* an evaluation for dyslexia or dysgraphia must include all of the domains or other requirements listed in TEC, §38.003, and §74.28 of this title, including any handbook adopted in the rule;

*(iii)* when identifying dyslexia and determining eligibility or continued eligibility for special education and related services, the ARD committee must include a professional who meets the requirements of TEC, §29.0031(b), and §74.28 of this title, including any handbook adopted in the rule; and

*(iv)* when a student is identified with dyslexia and/or dysgraphia, the terms dyslexia and/or dysgraphia, as appropriate, must be used in a student's evaluation report. See §89.1055 of this title (relating to Individualized Education Program) for documenting in the individualized education program. For formal eligibility purposes under special education, the category of specific learning disability will be reported by a school district.

(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 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.

(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). A student's eligibility based on a traumatic brain injury must include a medical diagnosis provided by a licensed physician.

(12) Visual impairment.

(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). Information from a variety of sources must be considered by the multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on visual impairment in order to determine the need for specially designed instruction as stated in 34 CFR, §300.39(b)(3), and must include:

*(i)* a medical report by a licensed ophthalmologist or optometrist that indicates the visual loss stated in exact measures of visual field and corrected visual acuity, at a distance and at near range, in each eye. If exact measures cannot be obtained, the eye specialist must so state and provide best estimates. The report should also include a diagnosis and prognosis whenever possible and whether the student has:

*(I)* no vision or visual loss after correction; or

*(II)* a progressive medical condition that will result in no vision or a visual loss after correction;

*(ii)* 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;

*(iii)* 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; and

*(iv)* as part of the full individual and initial evaluation, an orientation and mobility evaluation conducted by a person who is appropriately certified as an orientation and mobility specialist. The orientation and mobility evaluation 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.

(B) A person who is appropriately certified as an orientation and mobility specialist must participate in an initial eligibility determination and any reevaluation as part of the multidisciplinary team, in accordance with 34 CFR, §§300.122 and 300.303-300.311, in evaluating data used to make the determination of the student's need for specially designed instruction.

(C) A child under three years of age meets the criteria for visual impairment if the child's record indicates that the child is experiencing a developmental delay because of vision loss or impairment, or the child has a physical or mental condition that has a high probability of resulting in a developmental delay and a sensory impairment, in accordance with 34 CFR, §303.21.

(13) Developmental delay. A student with developmental delay is one who is between the ages of three through nine who is evaluated by a multidisciplinary team for at least one disability category listed in paragraphs (1)-(12) of this subsection and whose evaluation data, including Early Childhood Intervention (ECI), if applicable, indicates a need for special education and related services and shows evidence of, but does not clearly confirm, the presence of the suspected disability or disabilities due to the child's young age. In these cases, an ARD committee may determine that data supports identification of developmental delay in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development. To use this eligibility category, multiple sources of data, including ECI, evaluation date, when available, must converge to indicate the student has a developmental delay as described by one of the following:

(A) performance on appropriate norm-referenced measures, including developmental measures, indicate that the student is at least 2 standard deviations below the mean or at the 2nd percentile of performance, when taking into account the standard error of measurement (SEM), in one area of development as listed in this paragraph, along with additional convergent evidence such as interviews and observation data that supports the delay in that area;

(B) performance on appropriate norm-referenced measures, including developmental measures, indicate that the student is at least 1.5 standard deviations below the mean or at the 7th percentile of performance, when taking into account the SEM, in at least two areas of development as listed in this paragraph, along with additional convergent evidence such as interviews and observation data that supports the delays in those areas; or

(C) a body of evidence from multiple direct and indirect sources, such as play-based assessments, information from the student's parent, interviews, observations, work samples, checklists, and other informal and formal measures of development, that clearly document a history and pattern of atypical development that is significantly impeding the student's performance and progress across settings when compared to age-appropriate expectations and developmental milestones in one or more areas of development as listed in this paragraph.

(14) Noncategorical. A student between the ages of three through five who is evaluated as having an intellectual disability, an emotional disability, a specific learning disability, or autism may be described as noncategorical early childhood.

(d) Developmental delay eligibility guidelines. Developmental delay, as described in subsection (c)(13) of this section, and noncategorical, as described in subsection (c)(14) of this section, may be used within the following guidelines.

(1) No school district will be required to use the eligibility category of developmental delay; however, if a district chooses to use this eligibility category, it must use the definition and criteria described in subsection (c)(13) of this section.

(2) If a school district chooses to use the eligibility category described in subsection (c)(13) of this section, it may do so beginning with the 2024-2025 school year.

(3) The eligibility category of noncategorical, as described in subsection (c)(14) of this section, must no longer be used by any school district beginning with the 2025-2026 school year. Any eligible student who begins the 2025-2026 school year already identified under subsection (c)(14) of this section may maintain this eligibility category, if determined appropriate by the student's ARD committee, until the required re-evaluation before the age of six.

*§89.1075. General Program Requirements and Local District Procedures.*

(a) Each school district must maintain an eligibility folder for each student receiving special education and related services, in addition to the student's cumulative record. The eligibility folder must include, but will 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) and supporting data.

(b) Each school district must develop policies, procedures, programs, and practices that are consistent with the state's established policies, procedures, programs, and services to implement the Individuals with Disabilities Education Act.

(c) For school districts providing special education services to students with visual impairments, students who are deaf or hard of hearing, or students who are deafblind, there must be written procedures as required in Texas Education Code (TEC), §30.002(c)(9).

(d) Each school district must ensure that each teacher who provides instruction to a student with disabilities:

(1) has access to relevant sections of the student's current IEP;

(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

(3) has an opportunity to request assistance regarding implementation of the student's IEP.

(e) Each school district must develop a process to be used by a teacher who instructs a student with a disability in a general education classroom setting:

(1) to request a review of the student's IEP;

(2) to provide input in the development of the student's IEP;

(3) that provides for a timely district response to the teacher's request; and

(4) that provides for notification to the student's parent or legal guardian of that response.

(f) 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.

(g) School districts that contract for services for day or residential program placements must do so in accordance with 34 Code of Federal Regulations (CFR), §300.147, and §89.1092 and §89.1094 of this title (relating to Residential Placement Programs for the Provision of a Free Appropriate Public Education (FAPE) and Day Placement Programs for the Provision of a Free Appropriate Public Education (FAPE)).

(h) This subsection is effective until July 1, 2027. 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.

(i) Beginning July 1, 2027, 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 10 calendar days before the school district proposes or refuses the action unless the parent agrees to a shorter timeframe.

(j) The transition and employment designee required of each school district or shared services arrangement by TEC, §29.011, must complete the required training annually as developed by the commissioner of education within 90 calendar days of being initially designated and each time the training is updated by the commissioner. The designee must provide information about transition requirements and coordination among parents, students, and appropriate state agencies to ensure that school staff can communicate and collaborate effectively.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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### 19 TAC §89.1092, §89.1094

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §29.001, as amended by House Bill (HB) 2 and Senate Bill (SB) 568, 89th Texas Legislature, Regular Session, 2025, which establishes criteria for the implementation of special education law; TEC, §29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which requires the agency to develop eligibility criteria for students receiving special education services; TEC, §29.004, which establishes criteria for a full individual and initial evaluation; TEC, §29.008, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes contracts for services to students with disabilities in a residential or day placement program; TEC, §29.011, which establishes transition planning; TEC, §29.026, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes rulemaking authority for the commissioner as necessary to implement TEC, Chapter 29, Subchapter A; TEC, §48.102, as amended by HB 2, 89th Texas Legislature, Regular Session, 2025, which establishes the funding framework for students receiving special education services under the Foundation School Program; TEC, §48.1021, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes special education service groups used in determining funding under the Foundation School Program; TEC, §48.1022, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes special education transition year funding; TEC, §48.304, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes day placement program or cooperative funding; 34 CFR, §300.101, which establishes the requirement that free appropriate public education (FAPE) be available to all eligible children with disabilities; 34 CFR, §§300.114-300.118, which establish least restrictive environment requirements, including placement decisions and the provision of services in settings with nondisabled peers to the maximum extent appropriate; 34 CFR, §300.115, which requires public agencies to ensure a continuum of alternative placements is available to meet the needs of children with disabilities; 34 CFR, §300.129, which addresses the responsibilities of public agencies for children placed in or referred to private schools or facilities; 34 CFR, §300.147, which establishes state educational agency responsibilities for ensuring compliance and monitoring private school placements; 34 CFR, §§300.301-300.311, which establish requirements for evaluations, reevaluations, and eligibility determinations, including timelines and evaluation procedures; and 34 CFR, §300.503, which requires public agencies to provide parents prior written notice before proposing or refusing actions related to identification, evaluation, educational placement or the provision of FAPE.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§29.001, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.004; 29.008, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.011; 29.026, as added by HB 2 and SB 568, 89th Texas Legislature, 2025; 48.102, as amended by HB 2, 89th Texas Legislature, Regular Session, 2025; 48.1021, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 48.1022, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 48.304, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; and 34 Code of Federal Regulations (CFR), §§300.101, 300.114-300.118, 300.115, 300.129, 300.147, 300.301-300.311, and 300.503.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## 19 TAC §89.1092, §89.1094

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §29.001, as amended by House Bill (HB) 2 and Senate Bill (SB) 568, 89th Texas Legislature, Regular Session, 2025, which establishes criteria for the implementation of special education law; TEC, §29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which requires the agency to develop eligibility criteria for students receiving special education services; TEC, §29.004, which establishes criteria for a full individual and initial evaluation; TEC, §29.008, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes contracts for services to students with disabilities in a residential or day placement program; TEC, §29.011, which establishes transition planning; TEC, §29.026, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes rulemaking authority for the commissioner as necessary to implement TEC, Chapter 29, Subchapter A; TEC, §48.102, as amended by HB 2, 89th Texas Legislature, Regular Session, 2025, which establishes the funding framework for students receiving special education services under the Foundation School Program; TEC, §48.1021, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes special education service groups used in determining funding under the Foundation School Program; TEC, §48.1022, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes special education transition year funding; TEC, §48.304, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes day placement program or cooperative funding; 34 CFR, §300.101, which establishes the requirement that free appropriate public education (FAPE) be available to all eligible children with disabilities; 34 CFR, §§300.114-300.118, which establish least restrictive environment requirements, including placement decisions and the provision of services in settings with nondisabled peers to the maximum extent appropriate; 34 CFR, §300.115, which requires public agencies to ensure a continuum of alternative placements is available to meet the needs of children with disabilities; 34 CFR, §300.129, which addresses the responsibilities of public agencies for children placed in or referred to private schools or facilities; 34 CFR, §300.147, which establishes state educational agency responsibilities for ensuring compliance and monitoring private school placements; 34 CFR, §§300.301-300.311, which establish requirements for evaluations, reevaluations, and eligibility determinations, including timelines and evaluation procedures; and 34 CFR, §300.503, which requires public agencies to provide parents prior written notice before proposing or refusing actions related to identification, evaluation, educational placement or the provision of FAPE.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§29.001, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.004; 29.008, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.011; 29.026, as added by HB 2 and SB 568, 89th Texas Legislature, 2025; 48.102, as amended by HB 2, 89th Texas Legislature, Regular Session, 2025; 48.1021, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 48.1022, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 48.304, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; and 34 Code of Federal Regulations (CFR), §§300.101, 300.114-300.118, 300.115, 300.129, 300.147, 300.301-300.311, and 300.503.

*§89.1092. Residential Placement Programs for the Provision of a Free Appropriate Public Education (FAPE).*

(a) In accordance with Texas Education Code (TEC), §29.008, the commissioner of education shall maintain a list of approved residential placement programs that school districts may contract with for the provision of a free appropriate public education (FAPE) when a student's admission, review, and dismissal (ARD) committee determines the placement to be the least restrictive environment for the student. The school district that contracts with the residential program provider retains the obligation to ensure the student is provided with a FAPE in accordance with the student's individualized education program (IEP).

(b) For purposes of TEC, §29.008, educational environments described by §89.1005 of this title (relating to Instructional Arrangements and Educational Environments), the Texas Student Data System Public Education Information Management System, and this section, residential placements shall be distinguished between ARD committee-placed and not ARD committee-placed.

(c) Each school district, program, and provider must comply with all residential placement program requirements as part of the comprehensive system established and maintained under TEC, §29.001(c). The Texas Education Agency (TEA) will share any changes in requirements with all current approved and prospective providers as well as impacted districts.

(d) The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

(1) Provider--a public or private facility, institution, agency, or business as described in TEC, §29.008, with one or more residential placement program facilities that is approved to contract with a school district for the provision of special education and related services in a residential setting when the school district is unable to provide those services. A provider that contracts with a school district solely for the provision of related services is not subject to the requirements of this section.

(2) Residential placement-ARD committee-placed--a residential placement that includes the provision of special education and related services to one or more Texas public school students in a public or private residential program by a residential program provider, when the placement has been determined by the student's ARD committee to require a residential placement in order to facilitate the student's attainment of reasonable educational progress and to provide the student a FAPE. The placement is not intended for the provision of medical care or treatment.

(3) Residential placement-not ARD committee-placed--a residential placement that includes the provision of special education and related services to one or more Texas public school students in a residential facility as defined by TEC, §5.001(8), when the placement is not determined by the student's ARD committee.

(4) School district--includes independent school districts established under TEC, Chapter 11, Subchapters A-F, and open-enrollment charter schools established under TEC, Chapter 12, Subchapter D.

(e) This section does not apply to residential placements that are not ARD committee-placed; placements in correctional facilities; court-ordered placements; ARD committee placements at Texas School for the Blind and Visually Impaired; ARD committee placements or parent placements at the Texas School for the Deaf; or placements in a state supported living center.

(f) TEA shall periodically solicit applications from residential placement program providers that seek to contract with school districts for the provision of services and shall accept applications from program providers on an ongoing basis. A current contract for student placement with a school district is not required in order to be considered for approval.

(g) All contracts for residential placements under this section must be approved by TEA. A school district must utilize TEA's list of approved residential placement program providers when considering residential placement for a student. If the school district wishes to contract with a provider not on the list, the provider must submit an application to TEA.

(h) An approved residential placement program provider that operates more than one residential placement program facility must obtain approval for each facility if the provider plans to contract with school districts for services at those facilities.

(i) A residential placement program provider must meet minimum standards established by TEA to be approved and to remain in approved status. The minimum standards will address, but not be limited to, the following:

(1) requirements regarding appropriate certification or licensure for those who will work with students placed in the program;

(2) academic and behavioral curriculum content requirements and expectations;

(3) criminal background check requirements that must be at least equivalent to those required of public school employees;

(4) health and safety standards and any local or state accreditation and permit requirements;

(5) physical plant and equipment requirements;

(6) written policies, procedures, and operating guidelines that must include necessary standards and steps to be followed to ensure each student maintains the same rights as other public school students with disabilities, including when a student is subject to emergency behavioral interventions or disciplinary actions, as well as to ensure the prohibition of aversive techniques as defined by TEC, §37.0023; and

(7) fee schedules and guidelines for establishing fees for services.

(j) Once initially approved, a residential placement program provider must go through a reapproval process at least once every five years unless TEA has withdrawn approval before the end of the approval period or the provider has withdrawn its provider status before the end of the approval period. A provider seeking reapproval shall submit interest in reapproval in accordance with timelines and materials published by TEA. If a previously approved provider wants to be considered for approval again after its approval has expired or has been withdrawn, the provider must reapply as if the provider was seeking initial approval. Additionally:

(1) TEA may impose conditions on a residential placement program provider as necessary to ensure the provision of a FAPE for students placed in the residential placement program during the provider's approval period or while the provider is undergoing reapproval; and

(2) if TEA denies approval, denies reapproval, or withdraws approval of a residential placement program provider, a school district must take steps to remove any student currently placed in the program, or cancel a planned placement, as expeditiously as possible.

(k) TEA may conduct announced or unannounced onsite visits of a residential placement program that is serving one or more Texas public school students under this section and will monitor the program provider's compliance with the requirements of this section.

(l) Before a student's ARD committee places a student in, or refers a student to, a residential placement program, the ARD committee shall convene a meeting to review and revise as necessary an IEP for the student in accordance with 34 Code of Federal Regulations, §§300.320-300.325, applicable state statutes, and commissioner rules in this chapter to ensure that all IEP statements, descriptions, and explanations reflect the student's current academic, functional, and developmental needs. The ARD committee must:

(1) determine whether the purpose of the placement or referral for placement is for educational purposes. An ARD committee is prohibited from placing a student in a residential placement program solely for treatment or medical issues or issues in the home, as the committee's main responsibility is to comply with the Individuals with Disabilities Education Act (IDEA) and applicable state law regarding special education; and

(2) determine whether the proposed residential placement program is the least restrictive environment that can provide FAPE to the student, unless in an emergency situation, as determined by the ARD committee and documented in the IEP.

(m) The district shall initiate and conduct an in-person, onsite review of the approved program provider's facility and program to ensure that the program is appropriate for meeting the student's functional, developmental, and instructional needs before placement in the program.

(n) The student's ARD committee may only recommend a residential placement program if the committee determines that the nature and severity of the student's disability and special education needs are such that the student cannot be satisfactorily educated in a less restrictive environment. Additionally, the following requirements apply.

(1) The student's IEP must list which individualized supports and services the school district is unable to provide and which services the residential placement program will provide.

(2) At the time the ARD committee determines placement, the ARD committee shall establish, in writing, criteria and a projected date for the student's return to a less restrictive environment and document this information in the IEP.

(o) The appropriateness of the placement and the program shall be documented in the IEP at least annually. The student's progress towards reintegration, the appropriateness of the reintegration criteria, and the projected reintegration date shall be documented in the IEP at least annually.

(p) The school district shall make a minimum of two onsite, in-person visits annually, one announced and one unannounced, and more often if directed by TEA, to:

(1) review academic and behavioral data to verify that the program provider is implementing IEP services and any other contractual obligations, including meeting the TEA minimum standards; and

(2) verify that the educational program provided is appropriate for the student and the placement continues to be the least restrictive environment for the student.

(q) The placement of more than one student in the same program may be considered in the same onsite visit to the facility. However, the IEP of each student must be individually reviewed and a determination must be made for each student regarding the appropriateness of placement and services to be provided.

(r) Within 30 calendar days from an ARD committee's decision to place a student in an approved residential placement program, a school district must electronically submit to TEA notice of the placement and the fully executed contract in accordance with submission procedures specified by TEA.

(1) The contract for an individual student recommended for or placed in an approved residential placement program shall be reviewed by TEA. Under no circumstances shall a contract violate the minimum standards or program's established guidelines that were included as part of the provider's approval process.

(2) TEA will give the parties an opportunity to amend a contract that does not comply with the minimum standards or contains language or terms that preclude agency approval of the contract.

(3) Contracts between school districts and approved residential placement program providers shall not begin prior to August 1 of the contracted program year and must not extend past July 31.

(4) Amendments to a contract must be electronically submitted to TEA in accordance with submission procedures specified by TEA no later than 30 calendar days from the change to the contract. TEA has authority to approve or deny these amendments. If denied, the parties will be given an opportunity to further amend the contract to address the issue or issues that precluded TEA approval.

(s) The cost of residential placement programs will be funded according to TEC, §§29.008, 48.102, 48.1021, and 48.1022; §89.1005 of this title; §129.1025 of this title; and local and federal funds as necessary and appropriate.

(1) For approved contracts effective through July 31, 2027, each approved contract for a residential placement program shall be funded as follows:

(A) through the assigned tier and service group(s) in accordance with TEC, §48.102 and §48.1021;

(B) through a school district's local tax share as described by TEC, §29.008(b);

(C) through a reservation by the school district of 25% of its IDEA-B formula-base planning amount (or the equivalent amount of state and/or local funds); and

(D) through a reimbursement process only to the extent that the funding described in subparagraphs (A)-(C) of this paragraph are insufficient to cover the full costs of a residential placement, if the school district applies and meets all requirements to receive such reimbursement through TEA's IDEA-B discretionary residential fund set-aside.

(2) Beginning with approved contracts as of August 1, 2027, each approved contract for a residential placement program shall be funded as follows:

(A) through the assigned tier and service group(s) in accordance with TEC, §48.102 and §48.1021; and

(B) through a combination of state, local, and federal funds.

(t) School districts that contract for out-of-state residential programs shall do so in accordance with this section, except that the program provider must be approved by the appropriate agency in the state in which the facility is located rather than by TEA.

(u) If a residential placement program is ordered by a special education hearing officer or court of competent jurisdiction, the school district shall notify TEA of the order within 30 calendar days. The program provider serving the student is not required to complete the approval procedures described in this section for the ordered placement. If, however, the school district or other school districts intend to place other public school students in the program, the program provider will be required to go through the approval procedures to be included on the commissioner's list of approved providers.

(v) When a student who is placed by a school district in a residential placement program changes his or her residence to another Texas school district and the student continues in the contracted placement, the school district that negotiated the contract shall be responsible for the residential contract until July 31 or to the end of the contract period if earlier than July 31. This does not prohibit the new resident district from establishing its own contract with the approved provider and notifying the former district and TEA that the new district will take responsibility.

(w) Approved providers with current contracts for student placements entered into prior to September 1, 2026, or the effective date of the most recent amendments to this section, whichever is later, shall have until January 1, 2027, to become compliant with all current TEA requirements for residential placement programs if they wish to remain on the approved list. TEA may grant exceptions to this deadline in extenuating circumstances.

*§89.1094. Day Placement Programs for the Provision of a Free Appropriate Public Education (FAPE).*

(a) In accordance with Texas Education Code (TEC), §29.008, the commissioner of education shall maintain a list of approved day placement programs that school districts may contract with for the provision of a free appropriate public education (FAPE) when a student's admission, review, and dismissal (ARD) committee determines the placement to be the least restrictive environment for the student. The school district that contracts with the day placement program provider retains the obligation to ensure the student is provided with a FAPE in accordance with the student's individualized education program (IEP).

(b) For purposes of TEC, §29.008 and §48.304, educational environments described by §89.1005 of this title (relating to Instructional Arrangements and Educational Environments), the Texas Student Data System Public Education Information Management System, and this section, day placement programs shall be distinguished between private and public day placement programs.

(c) Each school district, program administrator, and provider must comply with all day placement program requirements as part of the comprehensive system established and maintained under TEC, §29.001(c). The Texas Education Agency (TEA) will share any changes in requirements with all current approved and prospective providers as well as impacted districts.

(d) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Private day placement program--a private day placement program includes the provision of special education and related services to one or more Texas public school students for more than 50% of the student's instructional day in a classroom or facility operated by a private provider contracted by a school district. The classroom or facility may be privately or publicly owned and may be on a district campus or other district facility. When a private day placement program that is operating in or on a publicly owned classroom or facility such as a district campus or other district facility and the program is set up to accept students from other districts, a school district wishing to place a student in the operating school district's (program administrator's) program may contract directly with the operating school district (program administrator) since the private provider has already been approved by TEA.

(2) Private provider--a private facility, institution, entity, agency, or business inside or outside of Texas that is approved to contract with a school district for the provision of special education and related services in a day placement program when the school district is unable to provide the services. A provider that a school district contracts with only for the provision of related services is not subject to the requirements of this section.

(3) Program administrator--a public or private provider that administers a day placement program as part of a cooperative available for districts to contract with on an as-needed basis.

(4) Public day placement program-district operated--a public day placement program-district operated includes the provision of special education and related services to Texas public school students from more than one school district by personnel employed by the operating school district (program administrator) for more than 50% of the student's instructional day in a classroom or facility owned and operated by the operating school district (program administrator), but the classroom or facility is not housed on a regular campus. A school district program that provides special education and related services to one or more of its resident (enrolled) students by district personnel for more than 50% of the student's instructional day in a classroom or facility owned or operated by the school district, but the classroom or facility is not housed on a regular campus is not subject to the requirements of this rule regarding establishment and approval, but the district shall still report the establishment and operation of these programs in accordance with a schedule and method prescribed by TEA.

(5) Public day placement program-non-district operated--a public day placement program-non-district operated includes the provision of special education and related services to one or more Texas public school students for more than 50% of the student's instructional day by personnel employed with or contracted by an education service center (ESC) or the Harris County Department of Education (HCDE) in a classroom or facility owned or leased by the ESC, HCDE, or a district with which an ESC or HCDE is contracting to provide services.

(6) Public provider--a school district, an ESC, or HCDE approved to operate a public day placement program.

(7) Regular campus--a public school campus that is designed primarily to teach the general education curriculum to students with and without disabilities.

(8) School district--the definition of a school district includes independent school districts established under TEC, Chapter 11, Subchapters A-F, and open-enrollment charter schools established under TEC, Chapter 12, Subchapter D.

(e) This section does not apply to placements in Head Start programs; at Texas School for the Blind and Visually Impaired; at Texas School for the Deaf; in transition-focused programs at district and community facilities for students who have met requirements for graduation and received a diploma but are continuing or have returned for the provision of services as authorized under §89.1070(b)(2) or (c)(1)-(3) of this title (relating to Graduation Requirements); in centralized locations for children receiving early childhood special education services; in a Regional Day School Program for the Deaf; or any program made for purposes other than ensuring the provision of a FAPE.

(f) To the extent that school districts are part of a shared services arrangement (SSA) for the provision of special education and related services and where those services are provided in a centralized location for only those districts that are members of the SSA, this section shall not apply. However, to the extent that an SSA allows students from districts that are not members of the SSA to be accepted into the SSA's centralized location's program, or when an SSA contracts with a private provider that would be subject to this rule, this section shall apply.

(g) TEA shall periodically solicit applications from public and private day placement program providers that wish to operate or provide day placement programs and services. TEA shall also accept applications from public and private providers on an ongoing basis. A current contract for student placement with a school district is not required in order to be considered for approval.

(h) All contracts for day placements under this section must be approved by TEA. A school district must utilize TEA's list of approved day placement program providers when considering day placement for a student. If the school district wishes to contract with a provider not on the list, the provider must submit an application to TEA.

(i) An approved private provider that wishes to replicate a current program with another school district must receive approval from TEA prior to establishing a new program.

(j) A school district that operates as an approved program administrator shall notify TEA within 30 calendar days from an ARD committee's decision to place its own enrolled student in its approved program.

(k) A public or private day placement program provider must meet minimum standards established by TEA to be approved and to remain in approved status. The minimum standards will address, but not be limited to, the following:

(1) requirements regarding appropriate certification or licensure for those who will work with students placed in the program;

(2) academic and behavioral curriculum content requirements and expectations;

(3) criminal background check requirements that must be at least equivalent to those required of public school employees;

(4) health and safety standards and any local or state accreditation and permit requirements;

(5) physical plant and equipment requirements;

(6) written policies, procedures, and operating guidelines that must include necessary standards and steps to be followed to ensure each student maintains the same rights as other public school students with disabilities, including when a student is subject to emergency behavioral interventions or disciplinary actions, as well as to ensure the prohibition of aversive techniques as defined by TEC, §37.0023; and

(7) fee schedules and guidelines for establishing fees for services.

(l) Once initially approved, a day placement program provider must go through a reapproval process at least once every five years unless TEA has withdrawn approval before the end of the approval period or the provider has withdrawn its provider status before the end of the approval period. A provider seeking reapproval shall submit interest in reapproval in accordance with timelines and materials published by TEA. If a previously approved provider wants to be considered for approval again after its approval period has expired or has been withdrawn, the provider must reapply as if the provider was seeking initial approval. Additionally, the following provisions apply.

(1) TEA may place conditions on the day placement program provider to ensure the provision of a FAPE for students who have been placed in the day placement program during the provider's approval period or during a reapproval process.

(2) If TEA does not approve, does not reapprove, or withdraws an approval from a day placement program provider, a school district must take steps to remove any students currently placed in the program, or cancel a student's planned placement, as expeditiously as possible adhering to TEA established timelines.

(m) TEA may conduct announced or unannounced onsite visits at a day placement program that is serving one or more Texas public school students in accordance with this section and will monitor the program provider's compliance with the requirements of this section.

(n) Before a student's ARD committee places a student in, or refers a student to, a day placement program, the ARD committee shall convene an ARD committee meeting to review and revise as necessary an IEP for the student in accordance with 34 Code of Federal Regulations (CFR), §§300.320-300.325, applicable state statutes, and commissioner rules in this chapter to ensure that all IEP statements, descriptions, and explanations reflect the student's current academic, functional, and developmental needs.

(o) The district shall initiate and conduct an onsite, in-person review of the program to ensure that the program is appropriate for meeting the student's functional, developmental, and academic needs before placement in the program.

(p) The student's ARD committee may only recommend a day placement program if the committee determines that the nature and severity of the student's disability and special education needs are such that the student cannot be satisfactorily educated on a regular campus in the school district. Additionally, the following requirements apply.

(1) The student's IEP must list which individualized supports and services a regular campus in the school district is unable to provide and which services the program will provide.

(2) At the time the ARD committee determines placement, the ARD committee shall establish, in writing, criteria and a projected date for the student's return to a regular campus in the school district and document this information in the IEP.

(q) The appropriateness of the placement and the program must be documented in the student's IEP at least annually. The student's progress toward reintegration, the appropriateness of the reintegration criteria, and the projected reintegration date shall be documented in the IEP at least annually.

(r) A school district that contracts for a public or private day placement program shall make a minimum of two onsite, in-person visits annually, one announced and one unannounced, and more often if directed by TEA, to:

(1) review academic and behavioral data to verify that the program provider is implementing IEP services and any other contractual obligations, including meeting the TEA minimum standards; and

(2) verify that the day placement program continues to be the least restrictive environment for the student.

(s) The placement of more than one student in the same program may be considered in the same onsite visit. However, the IEP of each student must be individually reviewed and a determination must be made for each student regarding the appropriateness of placement and services to be provided.

(t) Within 30 calendar days from an ARD committee's decision to place a student in an approved day placement program, the placing school district must electronically submit to TEA notice of the placement and the fully executed contract in accordance with submission procedures specified by TEA.

(1) The contract for an individual student recommended for or placed in an approved day placement program shall be reviewed by TEA. Under no circumstances shall a contract violate the minimum standards or program's established guidelines that were included as part of the provider's approval process.

(2) TEA will give the parties an opportunity to amend a contract that does not comply with the minimum standards or contains language or terms that preclude agency approval of the contract.

(3) Contracts between school districts and approved day placement program providers shall not begin prior to August 1 of the contracted program year and must not extend past July 31.

(4) Amendments to a contract must be electronically submitted to TEA in accordance with submission procedures specified by TEA no later than 30 calendar days from the change to the contract. TEA has authority to approve or deny these amendments. If denied, the parties will be given an opportunity to further amend the contract to address the issue or issues that precluded TEA approval.

(u) If a student who is placed in an approved day placement changes his or her residence to another Texas school district during the school year, the school district must notify TEA within 10 calendar days of the date on which the school district ceased contracting with the program provider for the student's placement or withdrew the student from the program. The student's new school district must meet the requirements of 34 CFR, §300.323(e), by providing comparable services to those described in the student's IEP from the previous school district until the new school district either adopts the student's IEP from the previous school district or develops, adopts, and implements a new IEP. The new school district must comply with all procedures described in this section for continued or new program placement.

(v) If a day placement program is ordered by a special education hearing officer or court of competent jurisdiction, the school district must notify TEA of the order within 30 calendar days. The program provider serving the student is not required to go through the approval procedures described in this section for the ordered placement. If, however, the school district or other school districts intend to place other students in that same program, the program provider will be required to go through the approval procedures to be included on the commissioner's list of approved providers.

(w) The cost of day placement programs will be funded according to TEC, §§48.102, 48.1021, and 48.1022; §89.1005 of this title; §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook); and local and federal funds as necessary and appropriate.

(x) Approved providers with current contracts for student placements entered into prior to September 1, 2026, or the effective date of the most recent amendments to this section, whichever is later, shall have until January 1, 2027, to become compliant with all current TEA requirements for day placement programs if they wish to remain on the approved list. TEA may grant exceptions to this deadline in extenuating circumstances.

(y) To qualify for the allotment authorized by TEC, §48.304, a program must also meet the requirements of this section and any other TEA-established criteria for the award of those funds.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 14, 2026.

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Cristina De La Fuente-Valadez
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Texas Education Agency
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## DIVISION 4. SPECIAL EDUCATION FUNDING

### 19 TAC §89.1121, §89.1125

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §29.001, as amended by House Bill (HB) 2 and Senate Bill (SB) 568, 89th Texas Legislature, Regular Session, 2025, which establishes criteria for the implementation of special education law; TEC, §29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which requires the agency to develop eligibility criteria for students receiving special education services; TEC, §29.004, which establishes criteria for a full individual and initial evaluation; TEC, §29.008, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes contracts for services to students with disabilities in a residential or day placement program; TEC, §29.011, which establishes transition planning; TEC, §29.026, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes rulemaking authority for the commissioner as necessary to implement TEC, Chapter 29, Subchapter A; TEC, §48.102, as amended by HB 2, 89th Texas Legislature, Regular Session, 2025, which establishes the funding framework for students receiving special education services under the Foundation School Program; TEC, §48.1021, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes special education service groups used in determining funding under the Foundation School Program; TEC, §48.1022, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes special education transition year funding; TEC, §48.304, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes day placement program or cooperative funding; 34 CFR, §300.101, which establishes the requirement that free appropriate public education (FAPE) be available to all eligible children with disabilities; 34 CFR, §§300.114-300.118, which establish least restrictive environment requirements, including placement decisions and the provision of services in settings with nondisabled peers to the maximum extent appropriate; 34 CFR, §300.115, which requires public agencies to ensure a continuum of alternative placements is available to meet the needs of children with disabilities; 34 CFR, §300.129, which addresses the responsibilities of public agencies for children placed in or referred to private schools or facilities; 34 CFR, §300.147, which establishes state educational agency responsibilities for ensuring compliance and monitoring private school placements; 34 CFR, §§300.301-300.311, which establish requirements for evaluations, reevaluations, and eligibility determinations, including timelines and evaluation procedures; and 34 CFR, §300.503, which requires public agencies to provide parents prior written notice before proposing or refusing actions related to identification, evaluation, educational placement or the provision of FAPE.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§29.001, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.004; 29.008, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.011; 29.026, as added by HB 2 and SB 568, 89th Texas Legislature, 2025; 48.102, as amended by HB 2, 89th Texas Legislature, Regular Session, 2025; 48.1021, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 48.1022, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 48.304, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; and 34 Code of Federal Regulations (CFR), §§300.101, 300.114-300.118, 300.115, 300.129, 300.147, 300.301-300.311, and 300.503.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## DIVISION 2. CLARIFICATION OF PROVISIONS IN FEDERAL REGULATIONS

### 19 TAC §§89.1050, 89.1055, 89.1096

The Texas Education Agency (TEA) adopts amendments to §§89.1050, 89.1055, and 89.1096, concerning special education services. The amendments are adopted with changes to the proposed text as published in the April 10, 2026 issue of the *Texas Register* (51 TexReg 2328) and will be republished. The adopted amendments update statutory authority and clarify current program practices and requirements in accordance with House Bill (HB) 2, Senate Bill (SB) 568, and SB 2, 89th Texas Legislature, Regular Session, 2025.

REASONED JUSTIFICATION: Section 89.1050 defines the criteria for the admission, review, and dismissal (ARD) committee.

The adopted amendment to subsection (a) aligns reference to federal and state law by adding new statutory references and repealing statutory references in accordance with HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025.

The adopted amendment to subsection (c)(1)(I) adds criteria for a career and technical education (CTE) representative of the ARD committee to be knowledgeable about the availability of CTE programs offered in the district. Based on public comment, the rule text was revised at adoption to clarify that the CTE representative may be the school district representative or a teacher, and, if the representative is a teacher, the individual may also serve as the general education teacher representative.

The adopted amendment to subsection (c)(2) adds a reference 19 TAC §89.1131, Qualifications of Special Education, Related Service, and Paraprofessional Personnel, to describe the certification and licensure requirements for special education personnel.

Adopted new subsection (c)(3) establishes that a prekindergarten teacher who is dual certified in general education and special education and is responsible for implementing the child's individualized education program (IEP) could represent both the general and special education teacher requirements of the ARD committee.

The adopted amendment to subsection (c)(4) establishes ARD committee membership requirements for students with visual impairments, who are deaf or hard of hearing, or who have deafblindness. Based on public comment, subsection (c)(4)(A)-(C) were revised at adoption to clarify that the required disability-specific teacher may also serve as the special education teacher representative when that teacher is the only special education teacher responsible for implementing the student's IEP. The amendment also removes the word "either" in subsection (c)(4)(C) for clarity.

At adoption, the amendment to subsection (d) was revised from the proposed requirement of at least ten school days' notice for ARD committee meetings and instead retains the original requirement of at least five school days' notice for ARD committee meetings until July 1, 2027.

Based on public comment, new subsection (e) was added at adoption to implement the transition from five school days to a 10-calendar-day notice requirement beginning July 1, 2027, rather than immediately.

Based on public comment, the adopted amendment to subsection (f) has been changed to maintain the original rule text requiring the school district to schedule and convene an ARD committee meeting or provide a written refusal within five school days, and language has been added at adoption to implement the transition from five school days to a ten-calendar-day notice requirement beginning July 1, 2027, rather than immediately.

Based on public comment, to allow school systems time for implementation, new subsection (g) was added at adoption to implement the updated timeline requiring school systems to provide the parent notice of scheduling options for the ARD committee meeting within 10 school days of receipt of a written request beginning July 1, 2027.

The adopted amendment to subsection (h) clarifies that written notice must be provided in the parent's primary language or other mode of communication. At adoption, cross references were also updated to align with the renumbered subsections.

At adoption, subsection (i) was revised to retain the existing prior written notice requirement of five school days until July 1, 2027, rather than implementing the proposed ten-calendar-day requirement, to allow school systems time to transition and implement the updated timeline.

New subsection (j) was added at adoption to establish the requirements that will take effect beginning July 1, 2027, including the transition to a 10-calendar-day prior written notice requirement.

Adopted new subsections (k)-(m) clarify school district requirements for providing required information, parent notice, and ARD committee procedures when residential placements or changes in the location of special education and related services are considered, consistent with applicable state and federal law.

Section 89.1055 establishes criteria for the IEP.

The adopted amendment to subsection (a) clarifies that all elements of the rule must be followed.

Adopted new subsection (b) clarifies the timeline for review of the annual IEP.

Adopted new subsection (c) clarifies present levels of academic achievement and functional performance (PLAAFP) requirements. Based on public comment, subsection (c)(2)-(5) was revised at adoption to clarify that the PLAAFP must address the disability characteristics unique to the student and the student's related service needs, describe the student's strengths, and identify academic and functional critical needs using baseline data.

The adopted amendment to subsection (d) clarifies the responsibilities of the ARD committee in establishing measurable annual goals.

The adopted amendment to subsection (d)(1)(A) and (B) clarifies when an annual goal is required, including when course content is modified or when a special education provider is responsible for instruction or services.

The adopted amendment to subsection (d)(1) removes former subparagraph (ii), eliminating the requirement to develop an annual goal solely when a student is removed from the general education setting and course content is modified.

The adopted amendment to subsection (d)(2) clarifies the role and use of short-term objectives/benchmarks in relation to measurable annual goals.

The adopted amendment to subsection (d)(2)(A)-(C) clarifies requirements for short-term objectives/benchmarks, including minimum number and the need for distinct timeframes and components to support individualized progress monitoring. At adoption, language was added in subsection (d)(2)(B) and (C) to specify that those requirements begin July 1, 2027.

The adopted amendment to subsection (d)(2) removes former subparagraphs (i) and (ii), consolidating and clarifying when short-term objectives/benchmarks are required and that they may not be used as the criterion for mastery of the annual goal.

Adopted new subsection (e)(1)-(3) adds criteria for the service delivery schedule.

Adopted new subsection (f) adds documentation of minutes a student spends in and out of the general education setting.

Adopted new subsection (g) establishes progress monitoring for the IEP and contingencies for making up any specially designed instruction missed due to emergencies, staffing shortages, or other unforeseen circumstances.

The adopted amendment to subsection (i)(2) clarifies that alternative state assessment documentation must be completed and included in the child's IEP.

The adopted amendment to subsection (j) clarifies what services are needed for extended school year services.

The adopted amendment to subsection (k) updates a statutory cross reference to align with current state law.

The adopted amendment to subsection (n) clarifies requirements for IEP development for students with dyslexia, including alignment with §74.28, documentation of eligibility and need for evidence-based instruction, required ARD committee membership, and, at adoption, relocated paragraph (3) includes parent notification concerning the Talking Book Program in order to provide better organization of information.

Based on public comment, new subsection (o) was added at adoption to specify which proposed IEP documentation requirements for dyslexia, including instruction, program components, delivery, provider qualifications, fidelity, and progress reporting, must be implemented with an effective date of July 1, 2027, to allow school systems time to implement the changes.

Adopted new subsection (p) clarifies documentation requirements when dyslexia-related components are not applicable. At adoption, language has been added to clarify that current requirements remain in effect prior to July 1, 2027, and that subsection (o) documentation requirements apply beginning July 1, 2027.

Adopted new subsection (q) clarifies that a specific learning disability in basic reading or reading fluency may not be identified solely to circumvent dyslexia requirements and requires documentation when dyslexia is not identified.

Adopted new subsection (r) clarifies requirements for IEP development for students with dysgraphia, including alignment with §74.28 and required documentation of eligibility and instructional decisions. At adoption, language was added to specify that the requirements in subsection (r) become effective July 1, 2027.

Adopted new subsection (s) clarifies requirements for IEP documentation for School Health and Related Services (SHARS) eligible services. Based on public comment, language was added to specify that the requirements in subsection (s) become effective beginning July 1, 2027, to allow school systems time to implement the changes.

Adopted amendments to subsections (u) and (x) clarify the language in accordance with current practice.

The adopted amendment to subsection (z) clarifies the language in accordance with current practice by updating the phrase "native language" to "primary language."

The adopted amendment to subsection (aa) clarifies and updates required IEP documentation elements, including participant identification and alignment with the ARD committee representative designation in §89.1050(c)(1)(D).

The adopted amendment to subsection (bb) clarifies requirements for providing translated IEPs, including definitions of written and audio translations and expectations for complete translation. Based on public comment, the amendment was modified at adoption to specify that the 10-school-day timeline for translation requirements begins July 1, 2027.

Adopted new subsection (dd)(4) sets criteria for extending timelines for transfer students if they are absent.

Section 89.1096 establishes provisions of services for students placed by their parents in private schools or facilities.

An amendment to the title of the section is adopted for clarification to align with SB 2, 89th Texas Legislature, Regular Session, 2025.

The adopted amendment to subsection (a) aligns state rules with federal Individuals with Disabilities Education Act (IDEA) requirements by clarifying that parentally placed private school students do not have an individual entitlement to special education services.

The adopted amendment to subsection (a)(1) clarifies the use of the rule.

The adopted amendment to subsection (a)(1)(B) clarifies that the public school evaluating the child determines if a school is a private school.

The adopted amendment to subsection (b) clarifies when a district does not have to provide educational services to a parentally placed private school student.

Based on public comment, the adopted amendment to subsection (c) retains the existing dual enrollment provisions through the end of the 2026-2027 school year to allow school systems time to transition and implement the new requirements. Beginning with the 2027-2028 school year, subsection (c) will no longer be in effect, and dual enrollment will be removed.

The adopted amendment to re-lettered subsection (d) clarifies when a parent can request an individualized services plan.

Adopted new subsections (e)-(k) establish new regulations based on SB 2, 89th Texas Legislature, Regular Session, 2025. The adopted language clarifies the IEP criteria used to determine eligibility for participation in the Texas Education Savings Account under Texas Education Code (TEC), §29.3615, including the minimum components of an IEP developed solely for eligibility purposes, which also allowing the use of an IEP written in compliance with IDEA.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began April 10, 2026, and ended May 11, 2026, and included public hearings on April 23 and 24, 2026. Following is a summary of the public comments received and agency responses.

Comment: One individual requested clarification that credential requirements for related service providers include licensed professional counselors and social workers and are not limited to a single credential type.

Response: This comment is outside the scope of the proposed rulemaking.

Comment: One superintendent opposed the proposed amendments across 19 TAC Chapter 89, stating that the changes unnecessarily increase procedural requirements, create administrative burden, and emphasize compliance over meaningful support for students without providing additional resources or improving outcomes.

Response: The agency disagrees. The proposed amendments clarify requirements, align with statutory changes, and promote consistency, transparency, and effective implementation of special education services while maintaining the ARD committee's role in individualized decision-making.

§89.1050, The Admission, Review, and Dismissal Committee

Comment: Twenty-nine individuals and Hallsville Independent School District (ISD) recommended withdrawing the phrase "and state" to describe the laws applicable in §89.1050(a), stating that the change creates ambiguity regarding applicable legal authority.

Response: The agency disagrees, as reference to state law was already in the rule. It has simply been rephrased.

Comment: Thirty individuals, Hallsville ISD, The Texas Council of Administrators of Special Education (TCASE), and The Texas Classroom Teachers Association commented in support of increased flexibility in CTE representation but requested clarification to allow qualified staff, including existing ARD committee members, to serve in the role without adding personnel, while emphasizing that the CTE teacher should remain the preferred representative to support informed decision-making.

Response: The agency agrees that clarification was needed and has modified the rule at adoption to state that the CTE representative could be the school district representative or a teacher. If the representative is a teacher, the teacher could also serve as the general education teacher representative.

Comment: Thirty individuals and Hallsville ISD commented in support of the proposed provision allowing a dual-certified prekindergarten teacher to fulfill both the general education and special education teacher roles on the ARD committee, stating that the change would provide helpful flexibility, particularly for smaller and rural districts.

Response: The agency agrees.

Comment: Forty three individuals, Hallsville ISD, The Texas Deafblind Project, and the Alliance of and for Visually Impaired Texans commented in opposition to language that would allow a teacher with deafblind certification to substitute for both the teacher of students with visual impairments and the teacher of students who are deaf or hard of hearing, stating that both certified professionals should be required members of the ARD committee for students who are deafblind.

Response: The agency disagrees that both a teacher of students with visual impairments and a teacher of students who are deaf or hard of hearing must always serve on the ARD committee for a student with deafblindness because the rule permits a teacher with deafblind certification as an alternative. At adoption, the agency deleted the word "either" in subsection (c)(4)(C) and clarified the role of a teacher with deafblind certification in fulfilling ARD committee membership requirements.

Comment: Thirty-nine individuals, Hallsville ISD, and TCASE commented in opposition to extending the prior written notice timeline from five school days to ten calendar days when initiated by the district, citing increased administrative burden, conflicts with manifestation determination review and evaluation timelines, delays in services, and implementation challenges. TCASE additionally recommended that, if adopted, the rule should explicitly include an exception for disciplinary changes in placement and preserve a five-school-day timeline unless the parent agrees to a shorter timeframe.

Response: The agency disagrees that the prior written notice timeline should remain at five school days and maintains that a ten-calendar-day timeline better supports meaningful parent participation in educational decision-making. However, based on public comment, the adopted amendment retains the current five-school-day requirement through June 30, 2027, and delays implementation of the ten-calendar-day requirement until July 1, 2027, to allow school systems time to transition and implement the updated requirement.

Comment: One individual commented in support of the proposed 10-calendar-day ARD notice requirement, stating that it would better align with four-day school week calendars.

Response: The agency agrees. However, based on public comment, changes have been made at adoption to make this change effective July 1, 2027, rather than immediately, so that school systems can prepare for the change.

Comment: Twenty-nine individuals and Hallsville ISD commented that §89.1050(c)(4) should be clarified to specify whether certain certified teachers may simultaneously fulfill multiple ARD committee roles, including whether a visual impairment or deaf education teacher may also serve as the required special education teacher.

Response: The agency agrees that clarification may be needed. At adoption, subsection (c)(4)(A)-(D) have been modified to allow a teacher of students with visual impairments, a teacher of students who are deaf or hard of hearing, and a teacher with deafblind certification to serve as the special education teacher representative on the ARD committee if they are the only special education teacher involved in implementing the student's IEP.

Comment: Twenty-nine individuals, Hallsville ISD, and TCASE commented in support of clarifying the timeline for a district to respond to a parent request for an ARD committee meeting under §89.1050(e), re-lettered as §89.1050(f) at adoption, while recommending additional clarification regarding the notice of scheduling options and alignment of timelines.

Response: The agency agrees that clarification was needed. At adoption, the agency retained the existing requirements until July 1, 2027, and delayed implementation of the new 10-school-day notice of scheduling options requirement to allow school systems time to prepare for the change and provide a clearer transition to the new timeline.

Comment: Twenty-eight individuals and Hallsville ISD commented that the state supported living center notice requirement under §89.1050(h), re-lettered as §89.1050(k) at adoption, adds unnecessary paperwork that may not be relevant to the student's needs. TCASE requested clarification on when the requirement is triggered and raised concerns about repeated provision of materials for existing placements, recommending options for parent request or provided electronic delivery.

Response: The agency disagrees that revisions are needed because §89.1050(k) implements TEC, §29.0056 and clearly identifies when the requirement applies. However, the agency will address requests for additional implementation guidance through technical assistance.

Comment: Thirty individuals, Hallsville ISD, and TCASE commented that the proposed requirements regarding a change in "location" under §89.1050(i) and(j), re-lettered as §89.1050(l) and (m) at adoption, are vague, overly broad, and potentially burdensome. TCASE also noted parents already have the right to request an ARD meeting and recommended clarifying that requests may be made when the factors identified in those subsections apply.

Response: The agency disagrees that edits are necessary because adopted §89.1050(l) and (m) identify the factors that trigger an ARD committee meeting and expressly permit a parent to request an ARD committee meeting if the parent believes those factors apply. However, the agency will provide additional implementation guidance through technical assistance.

Comment: Twenty-seven individuals and Hallsville ISD commented that the proposed change from "native language" to "primary language" requires additional clarification regarding how a student's primary language would be determined.

Response: The agency disagrees. "Primary language spoken at home" is a term commonly used by school districts and is reflected in the home language survey.

Comment: One individual commented in support of extending the timeline for transfer student annual ARD committee meetings when the student has been absent for three or more days, stating that the additional time would allow districts to make more individualized and data-driven decisions.

Response: The agency agrees.

Comment: Eight individuals commented that the proposed rules would impose fiscal and operational burdens on districts, including increased staffing demands, paperwork, software updates, additional meetings, and higher implementation costs, contrary to the statement that there would be no fiscal impact.

Response: The agency disagrees in part, as the changes are designed to align with current law and to respond to multiple requests and queries from districts over the years. Based on public comment, however, several provisions within the rules have been changed at adoption to apply beginning with July 1, 2027, rather than immediately, so that school systems can prepare for the changes.

Comment: Four individuals commented that the proposed ARD and IEP changes are overly prescriptive and risk shifting ARD committee work away from student-centered, individualized decision-making and toward a compliance-driven process.

Response: The agency disagrees and has determined the proposed requirements do not shift ARD committee work away from student-centered, individualized decision-making.

Comment: One individual commented that an appropriately certified orientation and mobility specialist should be required on the ARD committee for students with visual impairment or deaf blindness to provide expertise related to safety, mobility, and access to the educational environment.

Response: The agency disagrees that a change is necessary. A certified orientation and mobility specialist is required by TEC, §30.0021, to be part of a student's multidisciplinary team in an initial evaluation and as part of an ARD committee in a reevaluation for a child with a visual impairment.

§89.1055, Content of the Individualized Education Program

Comment: Two individuals commented in support of the proposed amendments, stating that increased clarity in PLAAFPs, service delivery, dyslexia identification, and timelines will improve consistency, transparency, and quality of IEPs but expressed concern about increased workload and implementation challenges due to staffing constraints and requested additional guidance and training.

Response: The agency agrees that the proposed amendments promote clarity, consistency, and improved IEP development and acknowledges the need for implementation support, noting that guidance and training will be provided to assist districts in effectively implementing the new requirements.

Comment: Fifteen individuals and Hallsville ISD opposed the proposed amendment to §89.1055(b), stating that the 365-day requirement eliminates existing flexibility, does not account for parent delays, emergencies, staffing shortages, or reconvening meetings, and would negatively impact the ability to recess ARD meetings.

Response: The agency disagrees. Federal law does not allow exceptions to an annual review of a student's IEP.

Comment: Fifteen individuals and Hallsville ISD opposed the proposed amendment to §89.1055(c) and (d), stating that the requirements are overly prescriptive, create unnecessary administrative burden, function as unfunded mandates, and undermine ARD committee discretion and individualized decision-making.

Response: The agency disagrees. The requirements for PLAAFP and annual goals promote consistency and quality by requiring baseline data to determine a student's present level of performance and measure progress over the IEP period while maintaining the ARD committee's role in individualized decision-making.

Comment: TCASE recommended revisions to §89.1055(c) to better align PLAAFP requirements with evaluation data, including student strengths, and clearly identify critical needs to inform annual goals.

Response: The agency agrees and has revised §89.1055(c)(2)-(5) at adoption. The adopted revisions require consideration of all disability characteristics unique to the student and related services needs, add a requirement to describe the student's strengths, and clarify that baseline data must identify the student's current skills or behaviors in academic and functional areas of critical need to support the development of measurable annual goals.

Comment: Fifteen individuals and Hallsville ISD opposed the proposed amendment to §89.1055(c)(2), stating that requiring ARD committees to address all disability conditions and related service needs is impractical and may result in overly lengthy IEPs that obscure priorities.

Response: The agency disagrees. The proposed amendments require consideration of all disability characteristics unique to the student and related services needs while allowing ARD committees to identify and prioritize areas of critical need for achievement within the IEP period.

Comment: One individual expressed concern that removing the requirement in §89.1055(d)(1) to establish an annual goal when a student is served outside the general education setting may reduce accountability and limit the ARD committee's ability to measure progress.

Response: The agency disagrees. The ARD committee still has the ability to measure progress and create goals as necessary to meet the students' needs. Removing the requirement does not remove the ability of the ARD committee to make the decisions regarding creating a goal or measuring progress.

Comment: TCASE raised concerns that the proposed amendment to §89.1055(f) and (g) are unclear, recommending simplified documentation of instructional minutes and clarification of requirements for procedures addressing missed services. Additionally, fifteen individuals and Hallsville ISD stated that the provisions are burdensome, unclear, and not practical to implement in situations such as staffing shortages or evolving funding requirements.

Response: The agency disagrees that changes to the rule are necessary. The requirements in §89.1055(f) and (g) provide flexibility for local implementation and expressly recognize emergencies, staffing issues, and other unforeseen circumstances. Additional clarification will be provided through guidance and training.

Comment: Fifteen individuals and Hallsville ISD opposed the proposed amendment to §89.1055(j), stating that replacing references to IEP goals with "services" reduces clarity regarding the purpose of extended school year (ESY) and may blur distinctions between ESY and regular school services.

Response: The agency disagrees. The use of "services" aligns with §89.1065 and maintains clarity regarding the purpose of ESY and its distinction from the regular school program.

Comment: Sixteen individuals, Hallsville ISD, and TCASE opposed the proposed dyslexia-related amendments, stating that they duplicate existing requirements in the Dyslexia Handbook, increase paperwork, and limit ARD committee flexibility. Three individuals also raised concerns that requirements such as naming programs in the IEP and distinguishing dyslexia from specific learning disability are unnecessary and administratively burdensome.

Response: The agency disagrees in part. The provisions provide clarity regarding specially designed instruction for students with dyslexia, including necessary documentation to support fidelity of implementation and appropriate eligibility determinations, and align with the Dyslexia Handbook while maintaining the ARD committee's role in individualized decision making. However, based on public comment, changes have been made at adoption to §89.1055(n) and (o) to clarify which dyslexia-related documentation requirements apply immediately and which take effect beginning July 1, 2027.

Comment: One parent supported the proposed dyslexia documentation requirements under §89.1055(n)(3) and (6), re-lettered to §89.1055(o)(1) and (4) at adoption, stating that identifying the instructional program and documenting fidelity statements would improve consistency, but requested additional clarification to the rule language. Another individual opposed the requirement, citing increased administrative burden, reduced flexibility, and potential disputes with parents.

Response: The agency agrees that the proposed changes would improve consistency. The agency disagrees that clarification is needed because §89.1055(o)(1) and (4) clearly identify the required IEP documentation regarding the dyslexia instruction program and fidelity of implementation. These requirements support consistent implementation while preserving the ARD committee's role in individualized decision-making. The agency, however, will provide additional implementation guidance.

Comment: Fifteen individuals, Hallsville ISD, and TCASE opposed the proposed amendment to §89.1055(r), re-lettered to §89.1055(s) at adoption, relating to the documentation of SHARS, stating that it duplicates existing Texas Health and Human Services Commission requirements and imposes additional unnecessary administrative burden.

Response: The agency disagrees in part, as clearly establishing the services eligible for Medicaid reimbursement is an important part of SHARS participation. However, based on public comment, changes have been made at adoption in re-lettered subsection (s) to begin this requirement on July 1, 2027.

Comment: Fifteen individuals and Hallsville ISD opposed the proposed amendment to §89.1055(t), re-lettered to §89.1055(u) at adoption, stating that requiring transition discussion beginning at age 13 is inconsistent with federal requirements and removes ARD committee discretion.

Response: The agency disagrees, clarifying that the rule preserves the existing requirement that transition services be included in the IEP in effect when the student turns 14.

Comment: Fifteen individuals and Hallsville ISD opposed the proposed amendment to §89.1055(w), re-lettered to §89.1055(x) at adoption, stating that the term "appropriate" is vague and may undermine decision-making rights of adult students and create inconsistent application.

Response: The agency disagrees. The use of the term "appropriate" is not intended to diminish the legal rights of adult students but reflects the requirement that ARD committees consider each situation and determine appropriate involvement consistent with existing rules.

Comment: Fifteen individuals and Hallsville ISD opposed the proposed amendment to §89.1055(z), re-lettered to §89.1055(aa) at adoption, stating that the requirement is duplicative and unnecessary because the district representative already indicates agreement or disagreement on the ARD signature page.

Response: The agency disagrees. The rule provides explicit requirements for documenting that the representative of the school district and the child's parent or adult student sign and indicate agreement or disagreement.

Comment: Sixteen individuals and Hallsville ISD opposed the proposed amendment to §89.1055(bb), re-lettered to §89.1055(cc) at adoption, stating that requiring a timeline to provide the finalized IEP is unreasonable given staffing shortages and caseload demands, increases administrative burden, and creates potential legal and logistical challenges.

Response: The agency disagrees in part. Parents have always been entitled to a written copy of the IEP at no cost. However, based on public comment, changes have been made at adoption in re-lettered subsection (cc) to state that the 10-school-day timeline applies as of July 1, 2027, so that school systems can prepare for the change.

Comment: Fifteen individuals and Hallsville ISD commented in support of the proposed amendment to §89.1055(cc)(4), re-lettered to §89.1055(dd)(4) at adoption, stating that it appropriately accounts for student absences, particularly for students new to a district.

Response: The agency agrees.

§89.1096, Provision of Services for Students Placed by their Parents in Private Schools or Facilities

Comment: TCASE commented that the proposal in §89.1096(a)(1) places responsibility on public schools to determine whether a private school qualifies as a nonprofit, creating administrative burden, and recommended that the state provide a centralized list of eligible private schools instead.

Response: The agency disagrees, as this is not within TEA's authority.

Comment: Fifteen individuals and Hallsville ISD opposed the proposed amendment to §89.1096(a)(1)(B), stating that private school information should not be weighted as heavily as results from a Full Individual Evaluation (FIIE) when determining eligibility.

Response: The agency disagrees. The private school information in this section only refers to private schools that would be eligible to participate in the equitable services required by IDEA. The section does not have any impact on FIIE.

Comment: One individual opposed the use of public-school resources to conduct special education evaluations for students participating in voucher programs, stating that private education providers should be responsible for these services, and expressed concern about impacts on public school funding and staffing.

Response: The agency disagrees. Existing federal and state child find requirements require public school districts to identify, locate, and evaluate students suspected of having disabilities, including those enrolled in private schools. These obligations are not altered by participation in voucher or Texas Education Freedom Account (TEFA) programs.

Comment: Disability Rights Texas, ARC of Texas, TCASE, and three individuals opposed the removal of §89.1096(c) regarding the dual enrollment option, stating it supports inclusion and access to early intervention. The commenters requested clarification on how current students would be impacted.

Response: The agency disagrees with retaining dual enrollment. The amendment aligns with IDEA requirements, and dual enrollment is not federally required. However, based on public comment, the adopted amendment retains the existing dual enrollment provisions through the end of the 2026-2027 school year to allow school systems time to transition and implement the new requirements. The agency clarifies that students currently receiving services through dual enrollment will not experience an immediate removal of services and decisions regarding services will continue to follow existing law and local procedures through the end of the 2026-2027 school year. Beginning with the 2027-2028 school year, the dual enrollment provisions will not be in effect.

Comment: Disability Rights Texas, the ARC of Texas, TCASE, fifteen individuals, and Hallsville ISD opposed integrating TEFA-related IEP provisions into §89.1096, stating it creates confusion, duplicates processes, increases administrative burden, and should be addressed in a separate rule, emphasizing the need for informed parent consent, greater transparency, and clear distinction that TEFA IEPs are not offers of free appropriate public education (FAPE). Texas Parent to Parent agreed with Disability Rights Texas and the ARC of Texas.

Response: The agency disagrees with separating the provisions. Inclusion within §89.1096 provides a cohesive framework aligned with statutory requirements; however, the agency acknowledges stakeholder recommendations to clarify distinctions between TEFA IEPs and IDEA IEPs, including suggestions regarding parental notice, and may consider these recommendations in future guidance.

Comment: Fifteen individuals and Hallsville ISD opposed the proposed amendments, stating that the changes would create an alternative special education framework that may not meet FAPE requirements, could result in duplicative processes, and may impose unfunded mandates.

Response: The agency disagrees. The amendments appropriately implement statutory requirements related to private school placement and TEFA participation and do not alter IDEA obligations or require a separate rule structure.

Comment: Two individuals recommended recognizing the role of related service providers, including speech-language pathologists, in the Teacher Incentive Allotment (TIA) and emphasized the importance of including related service providers in ARD committee processes to reflect practical implementation.

Response: The comments related to the TIA are outside the scope of the proposed rulemaking.

Comment: Two individuals requested additional clarity regarding equitable service delivery, staffing feasibility, and continuity of care for students with communication needs, emphasizing the need for clear expectations to support consistent implementation across settings.

Response: The agency disagrees and has determined that clarification through technical assistance is more appropriate than clarification in the rule.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §29.001, as amended by House Bill (HB) 2 and Senate Bill (SB) 568, 89th Texas Legislature, Regular Session, 2025, which establishes criteria for the implementation of special education law; TEC, §29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which requires the Texas Education Agency (TEA) to develop eligibility criteria for students receiving special education services; TEC, §29.004, which establishes criteria for completing full individual and initial evaluations of a student for purposes of special education services; TEC, §29.005, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes criteria for developing a student's individualized education program (IEP) prior to a student enrolling in a special education program; TEC, §29.010, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which requires TEA to develop and implement a monitoring system for school district compliance with federal and state laws regarding special education; TEC, §29.011, which requires the commissioner of education to adopt procedures for compliance with federal requirements relating to transition services for students enrolled in special education programs; TEC, §29.0111, which appropriates state transition planning to begin for a student no later than the student turning 14 years of age; TEC, §29.012, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which requires the commissioner to develop and implement procedures for compliance with federal requirements relating to transition services for students enrolled in a special education program; TEC, §29.026, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes rulemaking authority for the commissioner as necessary to implement TEC, Chapter 29, Subchapter A; TEC, §29.3615, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes IEP evaluations for a student who is not enrolled in a school district or open-enrollment charter school; TEC, §38.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes criteria for the screening and treatment for dyslexia and related disorders; Texas Government Code, §392.002, which requires the use of person first respectful language; 34 CFR, §300.101, which defines the requirement for all children residing in the state between the ages of 3-21 to have a free appropriate public education available; 34 CFR, §300.129, which establishes criteria for the state responsibility regarding children in private schools; 34 CFR, §300.131, which establishes child find for parentally placed private school children with disabilities; 34 CFR, §300.132, which establishes the basic requirement for the provision of services for parentally placed private school children with disabilities; 34 CFR, §300.133, which establishes criteria for expenditures; 34 CFR, §300.136, which establishes criteria for compliance; 34 CFR, §300.139, which establishes the criteria for location of services and transportation; 34 CFR, §300.142, which establishes criteria for use of personnel; 34 CFR, §300.143, which prohibits separate classes; 34 CFR, §300.307, which establishes the criteria for determining specific learning disabilities; 34 CFR, §300.310, which establishes criteria for observation to document the child's academic performance and behavior in the areas of difficulty; 34 CFR, §300.311, which establishes criteria for specific documentation for the eligibility determination 34 CFR, §300.320, which defines the IEP; 34 CFR, §300.322, which establishes criteria for parent participation; and 34 CFR, §300.323, which establishes criteria for when IEPs must be in effect.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§29.001, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.004; 29.005, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.010, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.011; 29.0111; 29.012, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.026, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.3615, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; and 38.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; Texas Government Code, §392.002; and 34 Code of Federal Regulations, §§300.101, 300.129, 300.131, 300.132, 300.133, 300.136, 300.139, 300.142, 300.143, 300.307, 300.310, 300.311, 300.320, 300.322, and 300.323.

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

(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 ARD committee is responsible for all of the functions for which the IEP team is responsible under federal and state law and regulations, 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 have been designated to receive special education and related services);

(4) 34 CFR, §300.530 and §300.531, and TEC, §37.004 (disciplinary placement of students with disabilities);

(5) 34 CFR, §§300.302-300.306 (relating to evaluations, re-evaluations, and determination of eligibility);

(6) 34 CFR, §§300.114-300.117 (relating to least restrictive environment);

(7) TEC, §28.0211 (Satisfactory Performance on Assessment Instruments Required; Accelerated Instruction);

(8) TEC, §28.0212 (Junior High or Middle School Personal Graduation Plan);

(9) TEC, §28.0213 (Intensive Program of Instruction);

(10) TEC, §28.025 (High School Diploma and Certificate; Academic Achievement Record);

(11) TEC, Chapter 29, Subchapter A;

(12) TEC, §29.048 (Admission, Review and Dismissal Committee Duties);

(13) TEC, Chapter 29, Subchapter I (Programs for Students Who Are Deaf or Hard of Hearing);

(14) TEC, Chapter 30, Subchapters A, B, and C;

(15) TEC, §33.081 (Extracurricular Activities);

(16) TEC, §37.307 (Placement and Review of Student with Disability);

(17) TEC, §38.034 (School Health and Related Services Program; Eligibility for Audiology Services);

(18) TEC, §39.023 (Adoption and Administration of Instruments);

(19) TEC, §39.025 (Secondary-Level Performance Required); and

(20) TEC, §48.102 (Special Education).

(b) For a student from birth through two years of age with a visual impairment or who is deaf or hard of hearing, an individualized family services plan meeting must be held in place of an ARD committee meeting in accordance with 34 CFR, §§300.320-300.324, and the memorandum of understanding between the Texas Education Agency and the Texas Health and Human Services Commission. For students three years of age and older, school districts must develop an IEP.

(c) ARD committee membership.

(1) ARD committees must include the following:

(A) the parents, as defined by 34 CFR, §300.30, of the student;

(B) not less than one general education teacher of the student (if the student is, or may be, participating in the general education environment) who must, to the extent practicable, be a teacher who is responsible for implementing a portion of the student's IEP;

(C) not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student;

(D) a representative of the school district who:

*(i)* is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities;

*(ii)* is knowledgeable about the general education curriculum; and

*(iii)* is knowledgeable about the availability of resources of the school district;

(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;

(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;

(G) whenever appropriate, the student with a disability;

(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;

(I) when considering initial or continued placement of a student in career and technical education (CTE):

*(i)* a representative from CTE who is knowledgeable about the availability of CTE programs offered in the district, who may be a member of the committee described in subparagraph (D) of this paragraph; or

*(ii)* a CTE teacher who is knowledgeable about the availability of CTE programs offered in the district, who may be a member of the committee described in subparagraph (B) of this paragraph; and

(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 emergent bilingual.

(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, §300.156, and further described in §89.1131 of this title (relating to Qualifications of Special Education, Related Service, and Paraprofessional Personnel).

(3) If a teacher is dual certified in general education and special education and is serving as a prekindergarten teacher, and the teacher is or would be the only general education teacher responsible for implementing the child's IEP, that teacher may represent both the general and special education teacher as required by paragraph (1)(B) and (C) of this subsection.

(4) If the student is:

(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 who may be a member of the committee described in paragraph (1)(C) of this subsection if that teacher is the only special education teacher involved in implementing the student's IEP;

(B) a student who is suspected or documented to be deaf or hard of hearing, the ARD committee must include a teacher who is certified in the education of students who are deaf or hard of hearing who may be a member of the committee described in paragraph (1)(C) of this subsection if that teacher is the only special education teacher involved in implementing the student's IEP;

(C) a student with suspected or documented deaf-blindness, the ARD committee must include a teacher who is certified in the education of students with visual impairments and a teacher who is certified in the education of students who are deaf or hard of hearing, or a teacher with a deafblind certification, who may be a member of the committee described in paragraph (1)(C) of this subsection if that teacher is the only special education teacher involved in implementing the student's IEP; or

(D) a student who is suspected or identified with dyslexia, when determining initial or continued eligibility, the ARD committee must include a professional who meets the requirements of TEC, §29.0031(b), and §74.28 of this title (relating to Students with Dyslexia and Related Disorders), including any handbook adopted in the rule.

(5) 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.

(d) This subsection is effective until July 1, 2027. 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.

(e) Beginning July 1, 2027, 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 in person 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 10 calendar days before the meeting unless the parents agree to a shorter timeframe.

(f) This subsection is effective until July 1, 2027. Upon receipt of a written request for an ARD committee meeting from a parent, the school district must:

(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.

(g) Beginning July 1, 2027, within 10 school days of receipt of a written request for an ARD committee meeting from a parent, the school district must:

(1) provide the parent notice of scheduling options for a meeting in accordance with the procedures in subsection (e) of this section; or

(2) provide the parent with written notice explaining why the district refuses to convene a meeting.

(h) The school district must provide the parent with a written notice required under subsection (d), (e) (e)(2), or (f)(2) of this section in the parent's primary language, unless it is clearly not feasible to do so. If the parent's primary 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 primary language or other mode of communication so that the parent understands the content of the notice.

(i) This subsection is effective until July 1, 2027. 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 primary 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.

(j) Beginning July 1, 2027, 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 primary language or other mode of communication. This notice must be provided to the parent at least 10 calendar days before the school district proposes or refuses the action unless the parent agrees to a shorter timeframe.

(k) When a new, proposed, or existing residential placement is discussed at a student's ARD committee meeting, the materials under TEC, §29.0056, must be provided to student's parent.

(l) When a school district is considering a change in the location of the provision of a student's special education and related services as documented in the student's IEP, the district must determine whether the change would substantially or materially alter the student's educational program. A proposed change in location must be communicated to the parent as soon as reasonably possible. When the proposed change would constitute a change in educational placement with any of the following being true, the school district must hold an ARD committee meeting and provide the parent prior written notice under 34 CFR, §300.503:

(1) the proposed change in location would revise the student's IEP;

(2) the proposed change in location would decrease the extent to which the student is educated with nondisabled peers, consistent with the least restrictive environment requirements in 34 CFR, §§300.114-300.116;

(3) the proposed change in location would alter the student's access to non-academic or extracurricular services or activities, as described in 34 CFR, §300.117; or

(4) the proposed change in location represents a different point on the continuum of alternative placements required under 34 CFR, §300.115.

(m) If the parent believes the factors in subsection (l) of this section apply to any proposed change in location, the parent may submit a written request for an ARD committee meeting and the district must respond in accordance with subsection (e) of this section.

*§89.1055. Individualized Education Program.*

(a) The individualized education program (IEP) developed by the admission, review, and dismissal (ARD) committee for each student with a disability must comply with the requirements of 34 Code of Federal Regulations (CFR), §300.320 and §300.324, and include all applicable information under Texas Education Code (TEC), §29.0051, and this section.

(b) A student's IEP must be reviewed by the student's ARD committee at least annually, which means no later than 365 days after the date of the last annual review.

(c) A statement of the student's present levels of academic achievement and functional performance (PLAAFP) must:

(1) include how the student's disability affects the student's involvement and progress in the general education curriculum, or, for preschool children, how the disability affects the student's participation in appropriate activities;

(2) address all disability characteristics unique to the student and the student's related services needs;

(3) describe the student's strengths;

(4) identify critical needs by describing what the student's non-disabled grade-level peer is expected to do in the general education curriculum in academic areas, and include baseline data that describes the student's current skills in the area of critical need; and

(5) identify critical needs by describing baseline data that includes the student's current skills or behaviors in functional areas.

(d) To be considered a measurable annual goal under 34 CFR, §300.320(a)(2), a goal must include the components of a timeframe, condition, behavior, and criterion. The ARD committee must consider the unique needs of the student and the curriculum standards to determine where in the curriculum the student may encounter barriers due to the disability or disabilities. An annual goal must be developed in areas where a critical need is identified and must not simply be restatements of the student's enrolled grade level essential knowledge and skills as described by Chapters 110-117 and 120 of this title (relating to Texas Essential Knowledge and Skills for English Language Arts and Reading, Texas Essential Knowledge and Skills for Mathematics, Texas Essential Knowledge and Skills for Science, Texas Essential Knowledge and Skills for Social Studies, Texas Essential Knowledge and Skills for Languages Other Than English, Texas Essential Knowledge and Skills for Health Education, Texas Essential Knowledge and Skills for Physical Education, Texas Essential Knowledge and Skills for Fine Arts, and Other Texas Essential Knowledge and Skills). While at least one measurable annual goal is required, the number of annual goals will be determined by the ARD committee after examination of the student's PLAAFP and areas of need.

(1) Annual goals are also required in the following circumstances:

(A) when the content of a subject/course is modified, whether the content is taught in a general or special education setting, in order to address how the content is modified; or

(B) when a special education teacher or service provider is designated as the teacher of record or is the provider solely responsible for delivering academic or functional instruction or related services.

(2) Short-term objectives/benchmarks, used as intermediary steps or milestones toward accomplishing an annual goal, may be included in a measurable annual goal but cannot be used as the criterion to indicate mastery of the annual goal. An ARD committee may choose to use short-term objectives/benchmarks for any student but must use them if the ARD committee has determined that a student will not participate in the general state assessment. Guidelines for short-term objectives/benchmarks are as follows:

(A) at least two short-term objectives/benchmarks must be included in an annual goal;

(B) beginning with IEPs developed or amended as of July 1, 2027, each short-term objective/benchmark must include a timeframe, condition, behavior, and criterion; and

(C) beginning with IEPs developed or amended as of July 1, 2027, each short-term objective/benchmark within an annual goal must have distinct time frames and differ in at least one additional component to ensure clarity and individualized progress monitoring.

(e) The ARD committee must document in the student's IEP the service delivery schedule that specifies the projected date for the beginning of the specially designed instruction and any related services that will be provided to the student, as well as the following for all specially designed instruction and related services:

(1) frequency, which is how often the specially designed instruction or related service will be provided within a designated time frame;

(2) duration, which is the length of each session, if applicable, or any determined or anticipated end date of instruction or service; and

(3) location/classroom setting, which is whether the specially designed instruction or related service will be provided in a general educational location/classroom/setting or a special education location/classroom/setting.

(f) The IEP must document on average how many minutes in the student's instructional day is spent in a location/classroom/setting outside of the general education location/classroom/setting. The IEP must also document the percentage of the student's instructional day, on average, that the student spends in a general education location/classroom/setting.

(g) In addition to regular progress monitoring of the implementation of a student's IEP and the student's measurable annual goals, the school district must have procedures in place on how it will document compliance with the provision of any student's specially designed instruction and related services, including supplementary aids and services, and how the district will attempt to make up any student's missed specially designed instruction or related services and contingencies for emergencies, staffing issues, or other unforeseen circumstances.

(h) The IEP must include a statement of any individual appropriate and allowable accommodations in the administration of assessment instruments developed in accordance with 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.

(i) 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 following requirements must be met.

(1) The IEP must include a statement explaining:

(A) why the student cannot participate in the general assessment; and

(B) why the particular alternate assessment selected is appropriate for the student.

(2) The Texas Education Agency's alternate assessment participation requirements form, if one is made available to school districts, must be completed and included in the student's IEP to document the statement required under this subsection.

(j) 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 the IEP services that will be addressed during ESY services.

(k) For students with visual impairments, from birth through 21 years of age, the IEP or individualized family services plan must also meet the requirements of TEC, §30.002.

(l) For students with autism eligible under §89.1040(c)(1) of this title (relating to Eligibility Criteria), the strategies described in this subsection must be considered, at least annually based on peer-reviewed, research-based educational programming practices to the extent practicable and, when needed, addressed in the IEP:

(1) extended educational programming (for example: extended day and/or ESY services that consider the duration of programs/settings based on data collected related to 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, communication, and self-help 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:

(A) antecedent manipulation, replacement behaviors, reinforcement strategies, and data-based decisions; and

(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 and is implemented and reviewed in accordance with subsection (t) of this section;

(5) beginning at any age, consistent with subsection (v) of this section, futures planning for integrated learning and training,

living, work, community, and educational environments that considers skills necessary to function in current and post-secondary environments, including self-determination and self-advocacy skills;

(6) parent/family training and support, provided by qualified personnel with experience in autism, that, for example:

(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:

(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: peer-based instruction and intervention, video modeling, social narratives, and role playing);

(10) professional educator/staff support (for example: training provided to personnel who work with the student to ensure 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 autism (for example: those associated with discrete-trial training, visual supports, applied behavior analysis, structured learning, augmentative communication, or social skills training).

(m) If the ARD committee determines that services are not needed in one or more of the areas specified in subsection (l) of this section, the IEP must include a statement to that effect and the basis upon which the determination was made.

(n) For students identified with the specific learning disability of dyslexia eligible under §89.1040(c)(9) of this title, the IEP must also be developed and implemented in accordance with law, this section, and the requirements under §74.28 of this title (relating to Students with Dyslexia and Related Disorders), including any handbook adopted under §74.28 of this title. This includes documentation of:

(1) the determination by the ARD committee that the student meets eligibility as a child with a disability due to the specific learning disability of dyslexia and the need for evidence-based dyslexia instruction, which is a special education service;

(2) the presence and involvement of the dyslexia member required by TEC, §29.0031, as noted by the signature in the IEP documenting the member's presence and involvement at the ARD committee meeting; and

(3) the student's parent being notified, either at the ARD committee meeting or by another method, of the Talking Book Program administered by the Texas State Library of Archives Commission and other available audio book services as required by TEC, §29.0031(e).

(o) Beginning with IEPs developed or amended as of July 1, 2027, to correspond with subsection (n) of this section, IEPs must also document:

(1) decisions around appropriate reading instruction, which must include the program name and all components and delivery of dyslexia instruction as identified under §74.28 of this title, including any handbook adopted in the rule;

(2) how the district's evidence-based dyslexia instruction program addresses the required components of dyslexia instruction and whether the student's PLAAFP or other areas of the IEP show evidence that the program must be supplemented with a focus on one or more components;

(3) how the program addresses the required instructional delivery methods and whether the student's PLAAFP or other areas of the IEP show evidence that the program must be supplemented to meet the student's needs;

(4) the fidelity statements/requirements that are included with the program and how those will be delivered and/or intensified for the student;

(5) a fully trained provider of dyslexia instruction identified under §74.28 of this title being assigned to implement the program for the student; and

(6) whether the IEP goal progress report will meet the requirements for the dyslexia progress report required under TEC, §29.0031(d), or whether a separate progress report will be communicated to a parent.

(p) If the ARD committee determines that one or more of the areas specified in subsection (o)(1)-(4) of this section are not applicable to the student, the IEP must include a statement to that effect and the basis upon which the determination was made. Note that any ARD committee discussions that are required under §74.28 of this title, including any handbook adopted under §74.28 of this title, still apply prior to July 1, 2027. Subsection (o) of this section specifically applies to documentation in the IEP as of July 1, 2027.

(q) A district is prohibited from identifying a specific learning disability as one solely in basic reading or reading fluency as a means to circumvent the requirements for students identified with dyslexia. If a specific learning disability in basic reading or reading fluency is not also identified as dyslexia, the IEP must document why and how the committee came to that conclusion.

(r) Beginning with IEPs developed or amended as of July 1, 2027, for students identified with the specific learning disability of dysgraphia eligible under §89.1040(c)(9) of this title, the IEP must also be developed and implemented in accordance with law, this section, and the requirements under §74.28 of this title, including any handbook adopted under §74.28 of this title. This includes documentation of:

(1) the determination by the ARD committee that the student meets eligibility as a child with a disability due to the specific learning disability of dysgraphia and the need for special education and related services; and

(2) decisions around appropriate writing instruction, including whether the student needs explicit, systematic instruction in handwriting; handwriting and spelling; or handwriting, spelling, and written expression.

(s) Beginning with IEPs developed or amended as of July 1, 2027, for students whose special education and related services also meet the criteria for medical and transportation services eligible for reimbursement under the School Health and Related Services (SHARS) Medicaid program, and the district is or expects to become an eligible provider, the student's IEP must document those services the district plans to submit for SHARS reimbursement determined to be both necessary for a free appropriate public education for purposes of compliance with the Individuals with Disabilities Education Act and medically necessary and reasonable for purposes of Medicaid reimbursement. Each student's IEP shall contain the necessary information to comply with the requirements set by the Texas Health and Human Services Commission to help ensure that submissions for reimbursement are accurate.

(t) 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. If a behavior improvement plan or a behavioral intervention plan is included as part of a student's IEP, the ARD committee shall review the plan at least annually, and more frequently if appropriate, to address:

(1) changes in a student's circumstances that may impact the student's behavior, such as:

(A) the placement of the student in a different educational setting;

(B) an increase or persistence in disciplinary actions taken regarding the student for similar types of behavioral incidents;

(C) a pattern of unexcused absences; or

(D) an unauthorized, unsupervised departure from an educational setting; or

(2) the safety of the student or others.

(u) Not later than the first IEP to be in effect when the student turns 14 years of age, the ARD committee must discuss and address the following issues in the IEP:

(1) appropriate student involvement in the student's transition to life outside the public school system;

(2) appropriate involvement in the student's transition by the student's parents and other persons invited to participate by:

(A) the student's parents; or

(B) the school district in which the student is enrolled;

(3) appropriate postsecondary education options, including preparation for postsecondary-level coursework;

(4) whether a functional vocational evaluation is appropriate;

(5) 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 waiting list for public benefits available to the student such as a waiver program established under the Social Security Act (42 U.S.C. Section 1396n(c)), §1915(c); and

(6) the use and availability of appropriate:

(A) supplementary aids, services, curricula, and other opportunities to assist the student in developing decision-making skills; and

(B) supports and services to foster the student's independence and self-determination, including a supported decision-making agreement under Texas Estates Code, Chapter 1357.

(v) Beginning not later than the first IEP to be in effect when the student turns 14 years of age, or younger if determined appropriate by the ARD committee, the IEP must include:

(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.

(w) The goals included in a student's IEP to comply with subsection (v) of this section are intended to comply with the requirements in TEC, §29.011(a)(6) and (8).

(x) Beginning not later than the first IEP to be in effect when the student turns 18 years of age (see §89.1049 of this title (relating to Parental Rights Regarding Adult Students) for notice requirement of transfer of rights), the ARD committee must discuss and address the following issues in the student's IEP:

(1) appropriate involvement in the student's transition and future by the student's parents and other persons, if the parent or other person:

(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 Texas Estates Code, Chapter 1357; and

(2) 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.

(y) A student's ARD committee shall review at least annually the issues described in subsections (u), (v), and (x) of this section and, if necessary, update the portions of the student's IEP that address those issues.

(z) All members of the ARD committee must have the opportunity to participate in a collaborative manner in developing the IEP. The school district must take all reasonable actions necessary to ensure that the parent understands the proceedings of the ARD committee meeting, including arranging for an interpreter for parents who are deaf or hard of hearing or whose primary language is a language other than English. 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.

(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.

(aa) 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:

(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 representative of the school district as identified in §89.1050(c)(1)(D) of this title (relating to The Admission, Review, and Dismissal Committee) agreed or disagreed with the decisions of the ARD committee.

(bb) If the student's parent is unable to speak English and the parent's primary 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 primary 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 primary language.

(1) For purposes of this subsection, a written copy of the student's IEP translated into Spanish or the parent's primary 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 IEP in English and not a partial translation or summary of the IEP in English.

(2) For purposes of this subsection, an audio recording of the student's IEP translated into Spanish or the parent's primary 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.

(3) If a parent's primary 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 primary language or other mode of communication.

(cc) A school district must give a parent a written copy of the student's finalized IEP at no cost to the parent as soon as possible, but, beginning with IEPs developed or amended as of July 1, 2027, no later than within 10 school days after the date on which it is finalized. If a written translation of the student's IEP that has been developed or amended beginning on July 1, 2027, in the parent's primary language in accordance with subsection (bb)(1) of this section will exceed 10 school days, the district must inform the parent and provide it to the parent as soon as the written translation is available. The district must document internally the date on which the IEP was provided to the parent and how it was provided (e.g., web portal, email, mail).

(dd) A school district must comply with the following for a student who is new to the school district.

(1) When a student transfers to a new school district within the state in the same school year and the parents or previous school district verifies that the student had an IEP that was in effect in the previous district, the new school district must meet the requirements of 34 CFR, §300.323(e), by either adopting the student's IEP from the previous school district or developing, adopting, and implementing a new IEP. The timeline for adopting the previous IEP or developing, adopting, and implementing a new IEP is 20 school days from the date the student is verified as being a student eligible for special education services.

(2) When a student transfers from a school district in another state in the same school year and the parents or previous school district verifies that the student had an IEP that was in effect in the previous district, the new school district must, if determined necessary, conduct a full individual and initial evaluation and make an eligibility determination and, if appropriate, develop, adopt, and implement a new IEP, within the timelines established in §89.1011 of this title (relating to Full and Individual Initial Evaluation). If the school district determines that an evaluation is not necessary, the timeline for the new district to develop, adopt, and implement a new IEP is 20 school days from the date the student is verified as being a student eligible for special education services.

(3) Students who register in a new school district in the state during the summer when students are not in attendance for instructional purposes, the provisions of paragraphs (1) and (2) of this subsection apply based on whether the students are coming from an in-state or out-of-state school district. All other provisions in this subsection apply to these students.

(4) If a student is absent from school on three or more days between the date the student is verified as being a student eligible for special education services and 20 school days, that period described by paragraphs (1) and (2) of this subsection may be extended by the number of school days equal to the number of school days during that period on which the student was absent.

(5) In accordance with 34 CFR, §300.323(g), the new school district must take reasonable steps to promptly obtain the student's records from the previous school district, and, in accordance with TEC, §25.002, and 34 CFR, §300.323(g), the previous school district 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.

(6) If a parent hasn't already provided verification of eligibility and the new school district has been unable to obtain the necessary verification records from the previous district by the 15th working day after the date a request for the records was submitted by the new district to the previous district, the new school district must seek verification from the student's parent. If the parent provides verification, the new school district must comply with all paragraphs of this subsection. The new school district is encouraged to ask the parent to provide verification of eligibility before the 15th working day after the date a

request for the records was submitted by the new district to the previous district. If the parent is unwilling or unable to provide such verification, the new district must continue to take reasonable steps to obtain the student's records from the previous district and provide any services comparable to what the student received at the previous district if they communicate those to the new district.

(7) For the purposes of this subsection, "verify" means that the new school district has received a copy of the student's IEP that was in effect in the previous district. The first school day after the new district receives a copy of the student's IEP that was in effect in the previous district begins the timelines associated with paragraphs (1) and (2) of this subsection.

(8) While the new school district waits for verification, the new school district must take reasonable steps to provide, in consultation with the student's parents, services comparable to those the student received from the previous district if the new school district has been informed by the previous school district of the student's special education and related services and placement.

(9) Once the new school district receives verification that the student had an IEP in effect at the previous district, comparable services must be provided to a student during the timelines established under paragraphs (1) and (2) of this subsection. Comparable services include provision of ESY services if those services are identified in the previous IEP or if the new district has reason to believe that the student would be eligible for ESY services.

*§89.1096. Provision of Services for Parentally Placed Private School Children with Disabilities.*

(a) 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. 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.

(1) For purposes of this section, private school is defined as a private elementary or secondary school, including any pre-school, religious school, and institutional day or residential school, that:

(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) as determined by the public school evaluating the child for eligibility as a child with a disability under the Individuals with Disabilities Education Act (IDEA) based on documentation obtained by the public school, parent, or private school, 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.

(b) When a student has been determined to be a child with a disability under IDEA but has been placed by his or her parents directly in a private school or facility, an admission, review, and dismissal (ARD) committee meeting of the district of the child's residence will 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 or if the parent declares that FAPE is not at issue when requesting an evaluation, the district is not responsible for providing educational services to the student, except as provided in 34 CFR, §§300.130-300.144, and subsection (d) of this section, until such time as the parents choose to enroll the student in public school full time.

(c) This subsection applies only through the end of the 2026-2027 school year. 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.

(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.

(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.

(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.

(d) Parents of a parentally placed private school child with a disability may request an individualized services plan (ISP) as described in 34 CFR, §§300.130-300.144. The public school district where the private school is located is responsible for the development and implementation of an ISP if the student is designated to receive services under 34 CFR, §300.132.

(e) The individualized education program (IEP) for purposes of Texas Education Code (TEC), §29.3615, when the child is not enrolled in public school must, at minimum, include the following components:

(1) a statement of the special education and related services and service delivery schedule that includes frequency, duration, and location, as well as the supplementary aids and services that would be provided to the child to enable the child to be involved in and progress in the child's enrolled grade level curriculum and to be educated and participate with children without disabilities to the maximum extent appropriate for the child's needs;

(2) an explanation of the extent, if any, to which the child would not participate with children without disabilities in a general education classroom;

(3) a statement of any individual appropriate accommodations or modifications that would be necessary for the child to make progress in the child's enrolled grade level curriculum; and

(4) the instructional arrangement or tiered funding level that is used to calculate the state special education funding allotment as determined by the decisions in paragraphs (1)-(3) of this subsection.

(f) At the ARD committee meeting at which eligibility is determined for a child who is not enrolled in public school, the ARD committee must develop the IEP described by subsection (e) or (g) of this section if the child's parent has requested one because the parent is interested in applying for the education savings account program under TEC, Chapter 29, Subchapter J.

(g) An IEP written in compliance with TEC, §29.005, and 34 CFR, §300.320, may also be used for purposes of eligibility under TEC, §29.3615.

(h) A child who is not enrolled in public school at the time of application to the education savings account program described by TEC, Chapter 29, Subchapter J, but who previously attended public school within the last three school years and had an IEP in effect during the current school year or in at least one of the previous two school years will be reported as eligible under TEC, §29.3615, if an instructional arrangement or tiered funding level was reported through the Public Education Information Management System by the public school where the child was previously enrolled in at least one of those school years. When there are different instructional arrangements or tiered funding levels reported for one or more of the three school years, the instructional arrangement or tiered funding level that was most recently reported will be reported as eligible under TEC, §29.3615.

(i) A child who had an IEP in effect in one or both of the previous school years at the time of application to the education savings account program described by TEC, Chapter 29, Subchapter J, but who is currently still enrolled in public school without an IEP in effect will not be reported as eligible under TEC, §29.3615.

(j) The IEP developed solely for purposes of TEC, §29.3615, under subsection (e) of this section is not subject to appeal.

(k) If a parent does not agree with the ARD committee's determination of eligibility for special education and related services, the parent may use the dispute resolution processes available under IDEA, Part B, 34 CFR, §300.1. et. seq., as applicable.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 14, 2026.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: October 4, 2026
Proposal publication date: April 10, 2026
For further information, please call: (512) 475-1497

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## 19 TAC §89.1053

The Texas Education Agency (TEA) adopts an amendment to §89.1053, concerning procedures for use of restraint and time-out. The amendment is adopted with changes to the proposed text as published in the May 8, 2026 issue of the *Texas Register* (51 TexReg 3039) and will be republished. The adopted amendment revises, expands, and aligns existing definitions; clarifies procedural requirements; and establishes a crisis prevention and intervention training requirement for school systems consistent with Senate Bill (SB) 133, 88th Texas Legislature, Regular Session, 2023, and House Bill (HB) 2 and SB 568, 89th Texas Legislature, Regular Session, 2025.

REASONED JUSTIFICATION: Section 89.1053 establishes the procedures governing the use of restraint and time-out for students receiving special education and related services. The adopted amendment to the section title aligns the rule with state statute.

The adopted amendment to subsection (a) adds a requirement for crisis prevention and intervention training to align with HB 2 and SB 568 and further clarifies practices that constitute prohibited forms of confinement.

The adopted amendment to subsection (b) adds definitions for the terms crisis, crisis prevention and intervention training, imminent, law enforcement duties, seclusion, and taser and expands the existing definitions for emergency and restraint to promote clarity and consistency in implementation in alignment with SB 133, HB 2, and SB 568. Based on public comment, the definition of time-out has been revised at adoption to provide greater clarity regarding the settings in which time-out may occur, including whether other students may be present.

Adopted new subsection (d)(5) clarifies training requirements to emphasize instruction on disability-related behaviors and evidence-based, individualized positive behavioral interventions in alignment with SB 133, HB 2, and SB 568.

The adopted amendment to subsection (e) clarifies documentation and notification requirements for each use of restraint, including establishing a uniform timeline for placement of written documentation in a student's special education eligibility folder to support admission, review, and dismissal (ARD) committee review.

The adopted amendment to subsection (f) aligns with HB 2 and SB 568 by reaffirming that restraint may not be used as a disciplinary or behavior management technique or as a method to gain student compliance.

The adopted amendment to subsection (g) clarifies that the ARD committee is responsible for reviewing, at least annually, the use, amount, and effectiveness of time-out as a behavioral intervention and for considering any necessary revisions to the student's individualized education plan, behavioral intervention plan, or positive behavior supports to align with HB 2 and SB 568.

The adopted amendment to subsection (i) clarifies documentation requirements for time-out to ensure consistent data collection that enables ARD committees and TEA to monitor use, evaluate effectiveness, and verify compliance with individualized planning requirements.

New subsection (j) adds requirements and criteria for crisis prevention and intervention training to align with HB 2 and SB 568.

The adopted amendment to subsection (k) strengthens student protections by clarifying that practices must safeguard health, safety, and dignity. Based on public comment, subsection (k) was amended at adoption to expressly prohibit aversive techniques by referencing Texas Education Code (TEC), §37.0023.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began May 8, 2026, and ended June 8, 2026, and included public hearings on May 28 and 29, 2026. Following is a summary of public comments received and agency responses.

Comment: Three individuals expressed concern that the definition and application of the term "imminent" as it applies to serious physical harm may lead to inconsistent interpretation across districts and create uncertainty for staff during crisis situations. They recommended additional clarification, guidance, and examples to support consistent decision-making.

Response: The agency disagrees that the definition and application of the term "imminent" would lead to inconsistent interpretation, as the phrase "imminent, serious physical harm" existed in rule prior to the proposed amendment; the new text simply defines the term "imminent."

Comment: Two individuals, Texas Council of Administrators of Special Education (TCASE), Texas Parent2Parent (TxP2P), The Arc of Texas, and Disability Rights Texas (DRTx) raised concerns regarding the scope and implementation of training requirements, stating that expanded expectations for crisis prevention, de-escalation, and intervention training may result in significant operational, staffing, and fiscal impacts. They recommended clearer alignment of training requirements, broader staff inclusion, and additional state support or guidance.

Response: The agency disagrees as the rule implements the elements of TEC, §37.0021, which calls for educational staff to be trained in crisis intervention and prevention. As noted in TEC and in the rule text, crisis intervention and prevention training may be combined with other training as outlined in TEC, §21.4514.

Comment: Two individuals expressed concern regarding increased administrative burden and compliance requirements, stating that expanded documentation, data collection, and standardized timelines may reduce local flexibility and increase workload, and one of the individuals recommended development of streamlined documentation tools to reduce duplicative reporting.

Response: The agency disagrees as standardized timelines are necessary to ensure all students and parents benefit from notification and documentation should be maintained for compliance and general supervision.

Comment: One individual commented that the proposed rule lacks sufficient standardization regarding identification of "high-risk personnel," stating that leaving determinations to local discretion may result in inconsistent implementation across districts. The individual recommended development of a statewide assessment framework.

Response: The agency disagrees that additional standardization is necessary, as the rule allows for local discretion to account for varying district contexts while maintaining required safeguards to support consistent implementation.

Comment: TCASE commented that references to Tasers or incapacitation devices in restraint procedures are inappropriate and may create confusion regarding permissible practices. TCASE recommended removing such references and clearly distinguishing between school personnel restraint practices and law enforcement use of force.

Response: The agency disagrees because the language is derived directly from TEC, §37.0021, and its inclusion is necessary to align the rule with statutory requirements established by the legislature.

Comment: TCASE commented that documentation requirements should clarify that reporting does not apply to actions taken independently by commissioned peace officers unless school personnel are directly involved in the restraint.

Response: The agency disagrees, as the applicability of the statute to commissioned peace officers is defined in TEC, §37.0021.

Comment: TxP2P commented in support of strengthened training requirements, stating that all members of a crisis intervention team, including law enforcement personnel on campuses, should receive safe physical intervention training to prevent harm to students.

Response: The agency agrees. Section 89.1053(m) and (n) outline when it is necessary for peace officers to receive training in crisis intervention and prevention.

Comment: The Arc of Texas and DRTx commented that the rule should require alignment between restraint training and crisis prevention and intervention training, stating that staff responsible for restraint should also be trained in de-escalation and prevention strategies.

Response: The agency agrees, and subsection (d)(3) requires that training on the use of restraint include prevention and de-escalation techniques and provide alternatives to the use of restraint, thereby aligning restraint training with crisis prevention and intervention practices.

Comment: The Arc of Texas and DRTx recommended strengthening post-restraint procedures, including required physical and mental health screenings and improved documentation to inform ARD committee decision-making.

Response: The agency disagrees that physical or mental health screenings should be required following the use of restraint, as such screenings may require parental consent and may not be feasible in all circumstances. Therefore, mandating this requirement would not be practicable for school systems to implement. The agency also disagrees that additional documentation requirements are necessary, as existing restraint documentation requirements provide information regarding the restraint for ARD committee consideration when appropriate.

Comment: DRTx commented on the definition of "seclusion" and use of "time-out," stating that the rule should expand the definition of "seclusion" to include blocking exits and should require tracking and reporting of time-out rather than promoting its continued use through required ARD review.

Response: The agency disagrees, as the definition of time-out in §89.1053(b)(9)(B) includes language about exits that are physically blocked. The agency does not promote the use of time-out but gives the ARD committee the ability to determine the interventions necessary for a student to receive a free appropriate public education.

Comment: One individual requested clarification on the definition of "time-out," stating that it is unclear whether settings with other students present qualify as time-out and recommended additional clarification and examples to distinguish time-out from other supervised breaks.

Response: The agency agrees that additional clarification is needed regarding the definition of time-out, including whether the presence of other students in the same room constitutes time-out or a supervised break. The definition of "time-out" in subsection (b)(9) has been revised at adoption to clarify that time-out may occur within or outside the classroom setting and with or without other students present.

Comment: One individual expressed support for crisis prevention training and trauma-informed practices and recommended continued oversight to ensure safe, consistent, and equitable responses to student behavior.

Response: The agency agrees.

Comment: One individual expressed concern that the rule does not explicitly reference statutory prohibitions on aversive techniques, stating that the omission may limit enforceability through complaints or due process and recommended incorporating these requirements into the rule.

Response: The agency agrees that additional language is needed regarding the use of aversive techniques. Subsection (k) has been revised at adoption to include a reference to the prohibition of aversive techniques as outlined in TEC, §37.0023.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §29.001, as amended by House Bill (HB) 2 and Senate Bill (SB) 568, 89th Texas Legislature, Regular Session, 2025, which establishes criteria for the implementation of special education law; TEC, §29.026, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes rulemaking authority for the commissioner of education as necessary to implement TEC, Chapter 29, Subchapter A; TEC, §37.0021, as amended by SB 133, 88th Texas Legislature, Regular Session, 2023, and HB 2, 89th Texas Legislature, Regular Session, 2025, which establishes rulemaking authority for the adoption of procedures governing the use of restraint and time-out for a student with a disability; and TEC, §37.0023, which prohibits aversive techniques that are intended to reduce the likelihood of a behavior recurring and requires the commissioner to adopt procedures under this section.

CROSS REFERENCE TO STATUTE. The amendment implements TEC, §29.001, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; §29.026, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; §37.0021, as amended by SB 133, 88th Texas Legislature, Regular Session, 2023, and HB 2, 89th Texas Legislature, Regular Session, 2025; and §37.0023.

*§89.1053. Procedures for the Use of Confinement, Restraint, Seclusion, and Time-Out.*

(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 restraint, time-out, and crisis prevention and intervention training. 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. In accordance with this policy, students 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.

(b) Definitions.

(1) "Crisis" means a situation in which a student is experiencing a state of dysregulation that overwhelms the student's baseline coping mechanisms and:

(A) may cause impaired logical thinking, potential risk of serious physical harm to self or others, functional impairment, or involuntary physiological responses; and

(B) is best addressed by crisis prevention and intervention to return the student's behavior to a regulated state and avoid an emergency as defined in this section.

(2) "Crisis prevention and intervention training" means evidence-based strategies, including proactive ongoing use of best practices, that are designed to equip individuals to recognize, respond to, and de-escalate crises and emergencies through individualized, developmentally and neurologically responsive supports and to use, only when necessary and appropriate, safely applied physical interventions.

(3) "Emergency" means a situation in which a student's behavior poses a threat of:

(A) imminent, serious physical harm to the student or others; or

(B) imminent, serious property destruction.

(4) "Imminent" means likely to occur immediately or without delay, leaving no reasonable opportunity to prevent serious physical harm through less restrictive interventions. Imminent does not include situations where there is time to safely use de-escalation, redirection, or other less restrictive interventions.

(5) "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, subject to any limitations as determined by the board of trustees of a school district under TEC §37.081(d).

(6) "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.

(A) "Physical restraint" means a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely.

(B) "Mechanical restraint" refers to the use of any device or equipment to restrict a student's freedom of movement. The term does not include devices implemented by trained school personnel or utilized by a student that have been prescribed by an appropriate medical or related services provider.

(7) "Seclusion" means a behavior management technique in which a student is confined in a locked box, locked closet, or locked room that:

(A) is designed solely to seclude a person; and

(B) contains less than 50 square feet of space.

(8) "Taser" means a device manufactured, sold, or distributed by Axon Enterprises (formally known as Taser International, Incorporated) that is intended, designed, made, or adapted to incapacitate a person by inflicting an electrical charge through the emission of a projectile or conductive stream. The term, for purposes of this section, includes a similar device manufactured, sold, or distributed by another person.

(9) "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:

(A) that is not locked;

(B) from which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object;

(C) that may occur within or outside the classroom setting; and

(D) that may occur with or without other students present.

(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.

(1) Restraint must be limited to the use of such reasonable force as is necessary to address the emergency.

(2) Restraint must be discontinued at the point at which the emergency no longer exists.

(3) Restraint must be implemented in such a way as to protect the health and safety of the student and others.

(4) Restraint must not deprive the student of basic human necessities.

(d) Training on use of restraint. Training for school employees, volunteers, or independent contractors must be provided according to the following requirements.

(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 whose job duties may place them at high risk of utilizing restraint.

(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.

(3) Training on use of restraint must include prevention and de-escalation techniques and provide alternatives to the use of restraint.

(4) All trained personnel must receive instruction in current professionally accepted practices and standards regarding behavior management and the use of restraint.

(5) Training on the use of restraint must include instruction on disability-related behaviors, including behaviors associated with neurological, developmental, or emotional disabilities, and evidence-based strategies to prevent, reduce, or respond to such behaviors. This training must emphasize individualized and developmentally appropriate approaches and the use of positive behavioral interventions and supports as alternatives to physical intervention and restraint.

(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.

(1) On the day restraint is utilized, the campus administrator or designee must be notified verbally or in writing regarding the use of restraint.

(2) On the day restraint is utilized, a good faith effort must be made to verbally notify the parent(s) or person standing in a parental relation to the student regarding the use of restraint.

(3) Written notification of the use of restraint must be placed in the mail or otherwise provided to the parent(s) or person standing in parental relation to the student within one school day of the use of restraint. In the case of residential placements, written notification must be provided to the parent(s) or person standing in parental relation to the student within 24 hours of the restraint, regardless of whether the day is a school day, weekend, or holiday.

(4) Written documentation regarding the use of restraint must be placed in the student's special education eligibility folder no later than the third school day after the restraint 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 behavior improvement plan or a behavioral intervention plan.

(5) Written notification must be provided to the student's parent(s) or person standing in parental relation to the student for each use of restraint, and documentation of each restraint must be placed in the student's special education eligibility folder. For purposes of this subsection, "each restraint" refers to each time the student is restrained by either physical force or mechanical device and released, regardless of the length of time of the restraint or the time between the release and the restart of the restraint. Multiple restraints may not be combined into a single restraint notification form, reported to the campus administrator or the parent(s) or person standing in parental relation to the student as a single restraint, or reported to the Texas Education Agency (TEA) as a single restraint. The written notification of each restraint must include the following:

(A) name of the student;

(B) name of the individual administering the restraint;

(C) date of the restraint and the time the restraint began and ended;

(D) location of the restraint;

(E) nature of the restraint;

(F) a description of the activity in which the student was engaged immediately preceding the use of restraint;

(G) the behavior of the student that prompted the restraint;

(H) the efforts made to de-escalate the situation and any alternatives to restraint that were attempted;

(I) observation of the student at the end of the restraint;

(J) contact information for the parent(s) or person standing in parental relation to the student to whom the school district sent the required notification of restraint; and

(K) one of the following:

*(i)* if the student has a behavior improvement plan or behavioral intervention plan, whether the behavior improvement plan or behavioral intervention plan may need to be revised as a result of the behavior that led to the restraint and, if so, identification of the staff member responsible for scheduling an ARD committee meeting to discuss any potential revisions; or

*(ii)* if the student does not have a behavior improvement plan or a behavioral intervention plan, information on the procedure for the student's parent or person standing in parental relation to the student to request an ARD committee meeting to discuss the possibility of conducting a functional behavioral assessment of the student and developing a plan for the student.

(f) Clarification regarding restraint. Restraint may not be used as a disciplinary or behavior management technique or as a method to gain student compliance. 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)(6) of this section does not include:

(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.

(g) Use of time-out. A school employee, volunteer, or independent contractor may use time-out in accordance with subsection (b)(9) of this section with the following limitations.

(1) Physical force or threat of physical force must not be used to place, maintain, or keep 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 behavior improvement plan or behavioral intervention plan if it is utilized on a recurrent basis to increase or decrease a targeted behavior. The student's ARD committee must review, at least annually, the use, amount, and effectiveness of time-out as a behavioral intervention and consider whether revisions to the student's IEP, behavioral intervention plan, or positive behavior supports are necessary to reduce or eliminate the need for time-out.

(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.

(h) Training on use of time-out. Training for school employees, volunteers, or independent contractors must be provided according to the following requirements.

(1) General or special education personnel who implement time-out based on requirements established in a student's IEP and/or behavior improvement plan or behavioral intervention plan 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 behavior improvement plan or behavioral intervention plan 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.

(4) All trained personnel must receive instruction in current professionally accepted practices and standards regarding behavior management and the use of time-out.

(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 and/or behavior improvement plan or behavioral intervention plan. If a student has a behavior improvement plan or behavioral intervention plan, the school district must document each use of time-out prompted by a behavior of the student specified in the student's behavior improvement plan or behavioral intervention plan, including a description of the behavior that prompted the time-out. Documentation of each use of time-out must include:

(1) a description of the behavior specified in the student's behavior improvement plan or behavioral intervention plan that prompted the use of time out; and

(2) any data collected regarding the use of time out, as addressed in the student's IEP, behavior improvement plan, or behavioral intervention plan. The ARD committee must use any collected data to evaluate the effectiveness of the intervention and provide a basis for making determinations regarding its continued use.

(j) Crisis prevention and intervention training. Training for school employees, volunteers, or independent contractors must be provided in accordance with the following requirements.

(1) School districts must create, document, and use risk criteria based on job role, campus assignments, or incident history to determine which personnel, including support staff and law enforcement, require training and the extent of training needed.

(2) Personnel who are designated as high risk must receive training that includes non-violent crisis intervention techniques, verbal de-escalation strategies, and safe physical intervention procedures.

(3) School districts shall require training using standards from the State Board for Educator Certification's continuing education clearinghouse in accordance with TEC, §21.4514.

(4) Minimum recommended training intervals include:

(A) annually for personnel determined to have a high risk of crisis involvement; and

(B) every two years for other campus-based personnel.

(5) Crisis prevention and intervention training may be combined with, or substituted by, other required training when 51% or more of the training content addresses the requirements of this subsection, including:

(A) trauma-informed care training in accordance with TEC, §38.036; and

(B) conflict resolution and positive student relationships training in accordance with TEC, §21.451(d)(3).

(k) Student safety. Any behavior management technique and/or discipline management practice must be implemented in such a way as to protect the health, safety, and dignity 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. Aversive techniques, in accordance with TEC, §37.0023, are prohibited from use by a school district or by a district employee, a volunteer, or an independent contractor.

(l) 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 TEA in accordance with reporting standards specified by TEA.

(m) Restrictions on peace officers and security personnel. In accordance with TEC, §37.0021(j), a peace officer performing law enforcement duties or school security personnel performing security-related duties on school property or at a school-sponsored or school-related activity must not restrain or use a chemical irritant spray or Taser on a student enrolled in Grade 5 or below, unless the student poses a serious risk of harm to the student or another person.

(n) Provisions applicable to 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 (l) 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.

(o) The provisions adopted under this section do not apply to:

(1) juvenile probation, criminal 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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 14, 2026.

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Cristina De La Fuente-Valadez
Director, Rulemaking
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For further information, please call: (512) 475-1497

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# CHAPTER 150. COMMISSIONER'S RULES CONCERNING EDUCATOR APPRAISAL
# SUBCHAPTER AA. TEACHER APPRAISAL

**19 TAC §150.1001**

The Texas Education Agency (TEA) adopts an amendment to §150.1001, concerning teacher appraisal. The amendment is adopted with changes to the proposed text as published in the July 3, 2026 issue of the *Texas Register* (51 TexReg 4327) and will be republished. The adopted amendment establishes new provisions related to pilot activities supporting the development or revision of the Texas Teacher Evaluation and Support System (T-TESS).

REASONED JUSTIFICATION: Section 150.1001 establishes general provisions related to teacher appraisal system selection, implementation of T-TESS, and statutory appraisal components.

The adopted amendment to §150.1001 adds new subsection (g) authorizing the commissioner to identify school districts and open-enrollment charter schools to participate in pilot activities supporting the development or revision of the T-TESS. The adopted amendment allows the commissioner to establish alternative requirements or timelines for school districts and charter schools participating in commissioner-approved pilot activities and clarifies that appraisal processes implemented in accordance with approved pilot requirements are considered in compliance with Chapter 150, Subchapter AA.

The adopted amendment is intended to support the ongoing development and continuous improvement of the T-TESS by providing a structured process for testing potential revisions to appraisal components, processes, or timelines in a limited number of school districts or charter schools. Adding pilot authority to the general provisions ensures clear rule-level authorization for pilot implementation while maintaining statewide consistency and compliance with statutory appraisal requirements.

Subsection (g) was modified at adoption to correct a clerical error from "charter schools who choose to participate" to "charter schools who agree to participate."

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began July 3, 2026, and ended August 3, 2026. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.351, which requires the commissioner of education to adopt a state-recommended appraisal process for teachers; and TEC, §21.352, which establishes requirements for school districts' selection of teacher appraisal systems.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §21.351 and §21.352.

*§150.1001. General Provisions.*

(a) All school districts have two choices in selecting a method to appraise teachers: a teacher appraisal system recommended by the commissioner of education or a local teacher appraisal system.

(b) The commissioner's recommended teacher appraisal system, the Texas Teacher Evaluation and Support System (T-TESS), was developed in accordance with the Texas Education Code (TEC), §21.351.

(c) The superintendent of each school district, with the approval of the school district board of trustees, may select the T-TESS. Each school district or campus wanting to select or develop an alternative teacher appraisal system must follow the TEC, §21.352, and §150.1007 of this title (relating to Alternatives to the Commissioner's Recommended Appraisal System).

(d) The commissioner may designate a regional education service center to serve as the T-TESS certification provider for the state. The designated regional education service center may collect appropriate fees under the TEC, §8.053, from school districts and open-enrollment charter schools for training and certification.

(e) Sections 150.1002 through 150.1006 of this title (relating to Assessment of Teacher Performance; Appraisals, Data Sources, and Conferences; Teacher Response and Appeals; Appraiser Qualifications; and Teacher Orientation) apply only to the T-TESS and not to local teacher appraisal systems.

(f) The statutorily required components of teacher appraisal are defined as follows.

(1) The implementation of discipline management procedures is the teacher's pedagogical practices that produce student engagement and establish the learning environment.

(2) The performance of teachers' students is how the individual teacher's students progress academically in response to the teacher's pedagogical practice as measured at the individual teacher level by one or more student growth measures.

(g) The commissioner may identify school districts and open-enrollment charter schools who agree to participate in pilot activities supporting the development or revision of the T-TESS. For pilot participants, the commissioner may establish alternative requirements or timelines related to §§150.1002, 150.1003, and 150.1005 of this title. School districts and charter schools that implement appraisal processes in accordance with commissioner-approved pilot requirements shall be considered in compliance with this subchapter.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 14, 2026.

TRD-202603971
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: October 4, 2026
Proposal publication date: July 3, 2026
For further information, please call: (512) 475-1497

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## CHAPTER 151. COMMISSIONER'S RULES CONCERNING PASSING STANDARDS FOR EDUCATOR CERTIFICATION EXAMINATIONS

### 19 TAC §151.1001

The Texas Education Agency (TEA) adopts an amendment to §151.1001, concerning passing standards for educator certification exams. The amendment is adopted without changes to the proposed text as published in the May 22, 2026 issue of the *Texas Register* (51 TexReg 3499) and will not be republished. The adopted amendment specifies the satisfactory scores for the educator certification examinations for Bilingual Education Spanish Supplemental.

REASONED JUSTIFICATION: Texas Education Code (TEC), §21.048(a), requires the commissioner to establish the satisfactory levels of performance required on educator certification examinations and requires a satisfactory level of performance on each core subject covered by an examination. The passing standards were established by subject-matter expert stakeholder committee groups.

Section 151.1001 specifies the passing standards for all pedagogical and content certification examinations as approved by the commissioner. The adopted amendment to Figure: 19 TAC §151.1001(b)(13) introduces passing standards for the Bilingual Education Spanish Supplemental Texas Examinations of Educator Standards (TExES) examination.

The average passing standard is expressed as an average raw cut score of all active forms of a test or the minimum proficiency level. It is critical to note that the actual raw cut scores may vary slightly from form to form to balance the overall difficulty of the test yet maintain consistency in scoring.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began May 22, 2026, and ended June 22, 2026. Following is the comment received and agency response.

Comment: One commenter supported TEA's effort to clarify passing standards for the Bilingual Education Spanish Supplemental exam, stating that this rule will help ensure consistency across preparation programs, strengthen the pipeline of qualified bilingual educators, and improve outcomes for emergent bilingual students.

Response: The agency agrees.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code, §21.048(a), which requires the commissioner of education to determine the level of performance considered to be satisfactory on educator certification examinations and further authorizes the commissioner to require a satisfactory level of performance on each core subject covered by an examination.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §21.048(a).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 14, 2026.

TRD-202603972
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: October 4, 2026
Proposal publication date: May 22, 2026
For further information, please call: (512) 475-1497

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# TITLE 25. HEALTH SERVICES

## PART 1. DEPARTMENT OF STATE HEALTH SERVICES

## CHAPTER 31. NUTRITION SERVICES
## SUBCHAPTER A. REGISTER OF TEXAS MOTHER-FRIENDLY WORKSITES

### 25 TAC §31.1

The executive commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), adopts an amendment to §31.1, concerning Register of Texas Mother-Friendly Worksites. Section 31.1 is adopted without changes to the proposed text as published in the June 26, 2026, issue of the *Texas Register* (51 TexReg 4100). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment is necessary to support updates to the Texas Department of State Health Services "Mother-Friendly" business designation as directed by the Texas Health and Safety Code Chapter 165, Breast-feeding. The Texas Mother-Friendly Worksite program provides minimum criteria for the designation in Title 25 Texas Administrative Code §31.1 and maintains a listing of designated worksites.

The updates to the rule reflect the program name, Texas Mother-Friendly Worksite Program; updates program contact information and application processes; introduces a redesignation process to ensure program integrity; and introduces additional options for voluntary Silver and Gold standard level designation criteria to align with worksite lactation best practices that reflect changes in business practice and technology.

COMMENTS

The 31-day formal comment period ended July 27, 2026. DSHS received comments regarding the proposed rule from one individual commenter. A summary of comments relating to the rule and DSHS' responses follows.

Comment: The commenter requested that the rule align with paid family leave policies.

Response: DSHS disagrees as paid family leave falls outside the scope of the rule. DSHS made no revisions to the rule text in response to this comment.

Comment: The commenter recommended considering tax incentives or financial enticements for worksites to provide lactation support to employees as outlined in the rule.

Response: DSHS disagrees as tax incentives and financial enticements are outside the scope of the rule. DSHS made no revisions to the rule text in response to this comment.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system and Texas Health and Safety Code §1001.075, which authorizes the executive commissioner of HHSC to adopt rules for the administration of Texas Health and Safety Code Chapter 1001. The amendment is authorized by Texas Health and Safety Code §165.003, which authorizes the department to maintain a list of mother-friendly businesses.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 11, 2026.

TRD-202603950
Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: October 1, 2026
Proposal publication date: June 26, 2026
For further information, please call: (512) 239-8263

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# TITLE 28. INSURANCE

## PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

## CHAPTER 137. DISABILITY MANAGEMENT

## SUBCHAPTER B. RETURN TO WORK

### 28 TAC §137.10

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amendments to 28 TAC §137.10, concerning return-to-work guidelines. Section 137.10 implements Texas Labor Code §413.011. The DWC medical advisor recommends the amendments to the commissioner of workers' compensation under Labor Code §413.0511(b).

The amendments to §137.10 are adopted without changes to the proposed text published in the July 31, 2026, issue of the *Texas Register* (51 TexReg 5000). Section 137.10 will not be republished.

REASONED JUSTIFICATION. The amendments adopt a different set of guidelines for disability duration values. The current rule requires the use of Medical Disability Advisor, while the adopted change requires the use of ODG by MCG, published by MCG Health (ODG by MCG). Amending §137.10 is necessary to instruct insurance carriers, health care providers, and employers to use the disability duration values in the current edition of the ODG by MCG instead of those in the MDGuidelines (formerly known as Medical Disability Advisor), as guidelines for the evaluation of expected or average return-to-work timeframes. The amendments also update DWC's website address and the section's effective date, and include nonsubstantive editorial changes that make updates for plain language and agency style to improve the rule's clarity.

Labor Code §413.011(e) requires the commissioner to adopt treatment guidelines and return-to-work guidelines by rule. Section 413.011(f) requires that those guidelines must be designed to ensure the quality of medical care and to achieve effective medical cost control, and to enhance a timely and appropriate return to work.

To fulfill their role in the Texas workers' compensation system, designated doctors are required to subscribe to these guidelines, which includes purchasing access to them. The current adopted treatment guidelines are published by ODG by MCG, and include access to return-to-work guidelines. Designated doctors cannot currently use ODG by MCG's return-to-work guidelines because the return-to-work guidelines in the current rule are published by MDGuidelines. MDGuidelines will change its pricing model and raise its rates substantially starting on October 1, 2026. Since the ODG by MCG treatment guidelines subscription already includes access to return-to-work guidelines, the amendments will allow system participants to use the ODG by MCG services they already subscribe to instead of maintaining a separate, costly subscription to MDGuidelines. Amending the rule to update the reference from Medical Disability Advisor to ODG by MCG is necessary to ensure continued participation in the workers' compensation system by avoiding unnecessary administrative and monetary burdens on doctors in the system. The change will promote efficiency by allowing system participants to benefit from a single subscription instead of maintaining two separate subscriptions to substantially similar services. Avoiding those unnecessary costs also complies with the requirement in Labor Code §413.011 that the commissioner's adopted return-to-work guidelines help achieve effective medical cost control.

The return-to-work guidelines in ODG by MCG are comparable to those in MDGuidelines, and moving to the guidelines in ODG by MCG makes sense administratively, economically, and clinically. Both sets of guidelines derive disability duration values from the same foundational methodology--population-based epidemiological data stratified by diagnosis, job classification, and physical demand characteristics. The underlying evidence base for expected return-to-work timeframes does not differ materially between the two sets of guidelines. In practice, duration values calculated using both sets of guidelines have been substantively equivalent across the overwhelming majority of diagnostic categories in Texas workers' compensation claims. As a result, replacing the return-to-work guidelines with those in ODG by MCG removes an unnecessary cost and duplication of resources without any loss of clinical accuracy or adjudicative reliability. In addition, because treatment and expected disability duration are evaluated together, using the ODG by MCG for both treatment, as is currently the case, and return-to-work disability duration calculations, as this order adopts, allows system participants to apply a single, integrated, evidence-based resource across both the treatment and return-to-work functions, which more accurately reflects actual clinical decision making.

As part of the implementation plan for this rule, DWC intends to train system participants on the use of the return-to-work guidelines in ODG by MCG.

DWC invited public comments on an informal draft posted on DWC's website on May 6, 2026, as well as on the formal proposal. DWC also held a public hearing on the proposal on August 24, 2026. DWC considered the comments it received when drafting this order.

SUMMARY OF COMMENTS AND INFORMATION SUBMITTED, AND AGENCY RESPONSE.

Commenters: DWC received six written comments by the August 31, 2026, deadline, and no oral comments at the August 24, 2026, hearing. All of the commenters included information, data, research, or analysis about the cost, benefit, or effect of the proposal. Commenters in support of the proposal were: Cheryl Olson, Sheryl Lawson, and Eleanor Armstrong for Britt Case Management; the State Office of Risk Management; the Office of Injured Employee Counsel; and Texas Mutual Insurance Company. No commenters requested changes, and no commenters were against the proposal.

Comments on §137.10. Every other state accepts ODG for treatment guidelines and return to work. Switching to ODG for return to work would be more efficient and in line with other states.

Agency Response to Comments on §137.10. DWC appreciates the comments and agrees.

Comment on §137.10. Streamlining the return-to-work guidelines with the adopted medical treatment guidelines under ODG promotes consistency, enhances efficiency, and lowers costs across the workers' compensation system.

Agency Response to Comment on §137.10. DWC appreciates the comment and agrees.

Comment on §137.10. Decreasing workers' compensation system costs is beneficial to the injured employees of Texas.

Agency Response to Comment on §137.10. DWC appreciates the comment and agrees.

Comment on §137.10. Because ODG by MCG incorporates both treatment and return-to-work guidelines within a single subscription, the proposed amendments would allow carriers and doctors to maintain a single ODG by MCG subscription while retaining access to both sets of guidelines at no additional cost.

Agency Response to Comment on §137.10. DWC appreciates the comment and agrees.

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to 28 TAC §137.10 under Labor Code §§413.011, 402.00111, 402.00116, and 402.061.

Labor Code §413.011(e) requires the commissioner to adopt treatment guidelines and return-to-work guidelines by rule. Section 413.011(f) states that the medical policies or guidelines the commissioner adopts in subsection (e) must be: (1) designed to ensure the quality of medical care and to achieve effective medical cost control; (2) designed to enhance a timely and appropriate return to work; and (3) consistent with §§413.013, 413.020, 413.052, and 413.053.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 8, 2026.

TRD-202603910
Kara Mace
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: September 28, 2026
Proposal publication date: July 31, 2026
For further information, please call: (512) 804-4703

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# TITLE 30. ENVIRONMENTAL QUALITY

## PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

### CHAPTER 37. FINANCIAL ASSURANCE
### SUBCHAPTER J. FINANCIAL ASSURANCE FOR RECYCLING FACILITIES

**30 TAC §37.931**

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §37.931.

Amended §37.931 is adopted without changes to the proposed text as published in the March 27, 2026, issue of the *Texas Register* (51 TexReg 2009) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The adopted rules implement House Bill (HB) 3229 passed by the 89th Texas Legislature, 2025. HB 3229 amended Texas Health and Safety Code (THSC) by adding new Chapter 376, Renewable Energy Component Recycling Facilities, which establishes new reporting, financial assurance, and penalty requirements for recycling facilities that accept, process, and repurpose components to recover valuable materials from wind turbine generators, solar energy devices, and battery energy storage systems. THSC, Chapter 376 requires owners of recycling facilities that recycle renewable energy components (henceforth called recycling facilities) to submit an annual report, by January 15, containing an inventory of unrecycled renewable energy components (including unrecycled components located offsite that the facility has taken control or ownership of), an estimated timeline to recycle these materials, a cost estimate to recycle or dispose the materials prepared by an independent, third-party professional engineer licensed in Texas, and evidence of financial assurance for the cost estimate provided.

Adopted amendments to 30 TAC Chapter 37 are limited to implementing requirements specific to the financial assurance mechanisms authorized for these recycling facilities. While no other amendments are adopted to Chapter 37, recycling facilities impacted by this rulemaking will also be subject to existing rules in Chapter 37, including 30 TAC §§37.61, 37.141, 37.151, and Chapter 37, Subchapter J (Financial Assurance for Recycling Facilities).

As part of this rulemaking, the commission is adopting revisions to 30 TAC Chapter 328, Waste Minimization and Recycling, concurrently in this issue of the *Texas Register*.

Section by Section Discussion

*§37.931, Financial Assurance Mechanisms*

The commission adopts new §37.931(3) to specify the authorized financial assurance mechanisms for recycling facilities subject to the financial assurance requirement in THSC, Chapter 376, and as adopted in 30 TAC Chapter 328, Subchapter M in this rulemaking. The commission amends §37.931 by adding a new paragraph (3) to implement THSC, §376.003(c) as established by HB 3229.

THSC, Chapter 376 allows the owner to demonstrate financial assurance using a parent company guaranty with a minimum investment grade credit rating for the parent company issued by a major domestic credit rating agency. A parent company guaranty is a type of corporate guarantee. A corporate guarantee may be used to demonstrate financial assurance under existing financial assurance rules in 30 TAC Chapter 37. Under Chapter 37, a corporate guarantor must be a direct or higher-tier parent corporation or a firm with a substantial business relationship with the owner or operator. The adopted rules allow an owner or operator to use a corporate guarantee to demonstrate financial assurance for recycling facilities but limit the guarantor to a parent company in accordance with THSC, §376.003(c).

The commission recognizes that THSC, Chapter 376 requires the owner of a recycling facility that accepts, processes, and repurposes components from renewable energy systems to submit evidence of financial assurance to the commission. The commission understands that the legislature intends for the commission to be the beneficiary of the financial assurance and to be able to access and use any funds from the financial assurance to recycle or dispose of all unrecycled components in the event that the owner or operator of the recycling facility fails to do so. Accordingly, the adopted rulemaking requires owners or operators of recycling facilities to provide financial assurance in accordance with 30 TAC Chapter 37 to ensure that adequate funds are available to properly recycle or dispose of unrecycled components at a recycling facility. The commission's financial mechanisms (corporate guarantee, letter of credit, and payment bond) correspond to the financial assurance that may be included as acceptable forms of financial assurance in THSC, §376.003(c). The wording and requirements for the financial assurance mechanism in adopted §37.931(3) must conform to the applicable requirements for financial assurance administered by the agency in Chapter 37.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amended rules implement HB 3229 from the 89th Texas Legislature, Regular Session, 2025. HB 3229 requires the owner of a recycling facility that accepts, processes, and repurposes components from a wind turbine generator, a solar energy device, or a battery energy storage system to submit a report to the agency that includes evidence of financial assurance. The adopted rules implement HB 3229 by establishing the requirements for the financial assurance. Financial assurance provides a source of funding to the agency to perform closure of a facility in the event that the owner fails to do so. The financial assurance requirement will apply to the owner of a recycling facility under THSC Chapter 376 in the absence of these rules. Because the adopted rules implement financial assurance requirements, the adopted rules do not change any existing requirements that protect the environment or reduce risks to human health from environmental exposure, nor do the adopted rules affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The adopted rules do not exceed a standard set by federal law. The adopted amendments do not exceed an express requirement of state law or a requirement of a delegation agreement. These rules were not developed solely under the general powers of the agency but are authorized by specific sections of the Texas Government Code and TWC, that are cited in the statutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The adopted amended rules implement HB 3229 from the 89th Texas Legislature, Regular Session, 2025. The adopted amended rules in Chapter 37 do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the adopted rules. The adopted rules in Chapter 37 establish financial assurance requirements for the owner of a recycling facility that accepts, processes, and repurposes components from a wind turbine generator, a solar energy device, or a battery energy storage system, as required by HB 3229. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. There were no comments received regarding the CMP.

Public Comment

The commission offered public hearings on April 23, 2026, and April 27, 2026. The comment period closed on April 27, 2026. No comments were received related to 30 TAC Chapter 37 amendments. The commission received comments related to amendments made in this rulemaking to 30 TAC Chapter 328, Waste Minimization and Recycling, from Harris County Pollution Control Services (HCPCS), one individual (IND), and the Lone Star Chapter of the Sierra Club (LSCSC). One commenter was in support of the rules, no commenters were against the rules, one commenter requested clarification of the rules, and two commenters suggested changes to the proposed rules. For the response to comments received related to 30 TAC Chapter 328 amendments, see the *Response to Comments* section of the adopted preamble for 30 TAC Chapter 328, Waste Minimization and Recycling, in this issue of the *Texas Register*.

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; Texas Health and Safety Code (THSC), §361.011, which confers the commission responsibility for the management of municipal solid waste; THSC, §361.017, which confers the commission responsibility for the management of industrial solid waste and hazardous municipal waste and provides authority to control all aspects of the management of industrial solid waste and municipal hazardous waste by all practical and economically feasible methods consistent with its powers and duties under THSC Chapter 361 and other law, and THSC, Chapter 376 which establishes requirements for renewable energy component recycling facilities.

The adopted rules implement House Bill (HB) 3229, 89th Texas Legislature, Regular Session, 2025, and THSC, Chapters 361 and 376.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 11, 2026.

TRD-202603951
Amy L. Browning
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: October 1, 2026
Proposal publication date: March 27, 2026
For further information, please call: (512) 239-0682

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# CHAPTER 328. WASTE MINIMIZATION AND RECYCLING
## SUBCHAPTER M. REQUIREMENTS FOR RENEWABLE ENERGY COMPONENT RECYCLING FACILITIES

### 30 TAC §§328.401, 328.411, 328.421, 328.431, 328.441, 328.451

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts new §§328.401, 328.411, 328.421, 328.431, 328.441, and 328.451.

New §§328.411, 328.421, 328.431, 328.441, and 328.451 are adopted with changes to the proposed text as published in the March 27, 2026, issue of the *Texas Register* (51 TexReg 2011) and, therefore, will be republished.

New §328.401 is adopted without changes to the proposed text as published in the March 27, 2026, issue of the *Texas Register* (51 TexReg 2011) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The adopted rules implement House Bill (HB) 3229 passed by the 89th Texas Legislature, 2025. HB 3229 amended Texas Health and Safety Code (THSC) by adding new Chapter 376, Renewable Energy Component Recycling Facilities, which establishes new reporting, financial assurance, and penalty requirements for recycling facilities that accept, process, and repurpose components to recover valuable materials from wind turbine generators, solar energy devices, and battery energy storage systems. THSC, Chapter 376 requires owners of recycling facilities that recycle renewable energy components (henceforth called recycling facilities) to submit an annual report, by January 15, containing an inventory of unrecycled renewable energy components (including unrecycled components located offsite that the facility has taken control or ownership of), an estimated timeline to recycle these materials, a cost estimate to recycle or dispose the materials prepared by an independent, third-party professional engineer licensed in Texas, and evidence of financial assurance for the cost estimate provided. The commission adopts new Subchapter M, Requirements for Renewable Energy Component Recycling Facilities, in Chapter 328 to implement HB 3229.

HB 3229 also amended Texas Water Code (TWC) §5.013(a)(11) to give TCEQ jurisdiction over the responsibilities assigned by THSC, Chapter 376 and amended TWC, §7.052 to set the amount of the penalty for a violation of THSC, Chapter 376 to not exceed $500 a day for each violation. Additionally, HB 3229 required the commission maintain a list of recycling facilities in compliance with THSC, Chapter 376 on the agency's website.

THSC, Chapter 376 is silent on many of the programmatic elements necessary to fully implement the statute, such as the activities that must be included in the cost estimate and the procedures for demonstrating financial assurance. The commission is using its general statutory authority to adopt provisions addressing these programmatic elements on which the statute is silent to provide consistency with other agency programs and clarity for regulated entities. All adopted rules are fully described in the *Section by Section Discussion* portion of this preamble.

*Closure and Financial Assurance Applicability*

The commission recognizes that THSC, Chapter 376 requires the owner of the recycling facility to submit evidence of financial assurance to the commission, with the commission being the beneficiary of the financial assurance and able to access and use any funds from the financial assurance to recycle or dispose of all unrecycled components in the event that the owner of the recycling facility fails to do so.

The commission's financial assurance rules are based on proper closure, in accordance with respective program rules. If closure is not properly performed, then the commission can use financial assurance to conduct closure. Typically, closure for recycling facilities under existing requirements will begin when the owner or operator provides written notification under Title 30, Texas Administrative Code (30 TAC) §330.11(c) and §328.5 for municipal solid wastes or under 30 TAC §335.6 for nonhazardous industrial wastes to the executive director of their intent to close the facility. Solely for the purpose of Subchapter M, the commission is adopting a definition of closure to mean the act, outside of daily operations, of collecting all components accepted from a wind turbine generator, a solar energy device, or a battery energy storage system, including any components the recycling facility has taken title to or assumed control of regardless of whether the components are located at the recycling facility, and properly recycling or disposing of the components. To implement the requirements for financial assurance from THSC, Chapter 376, recycling facilities subject to Subchapter M may be required to perform closure. The recycling facility owner or operator's failure to perform closure when required allows the executive director to call on the financial assurance mechanism under 30 TAC §37.101.

*Enforcement, Including Penalties*

The commission may conduct investigations to ensure compliance with this subchapter. The commission and the attorney general, as appropriate, will enforce this subchapter and may, among other actions, institute a suit under TWC, §7.032 for injunctive relief against a person to restrain the violation or threat of violation of adopted Subchapter M.

Failure to comply with this subchapter may result in enforcement, including penalties. The amount of an administrative penalty for a violation of this subchapter will not exceed $500 a day for each violation.

*Internet Posting*

In accordance with HB 3229, TCEQ will maintain a publicly available list of recycling facilities complying with THSC, Chapter 376, on its website. For owners or operators of recycling facilities reporting by January 15th, the agency will compile and publish a list by March 1st of each year. After that list has been published, the agency will maintain and update the list periodically.

As part of this rulemaking, the commission is adopting revisions to 30 TAC Chapter 37, Financial Assurance, concurrently in this issue of the *Texas Register*.

Section by Section Discussion

*Subchapter M, Requirements for Renewable Energy Component Recycling Facilities*

The commission adopts new Subchapter M to implement HB 3229 and establish the reporting, financial assurance, and recordkeeping requirements for owners or operators of renewable energy components recycling facilities.

*§328.401, Purpose*

Adopted new §328.401 establishes the purpose of Chapter 328, Subchapter M, which is to establish procedures and requirements for recycling facilities that accept, process, and repurpose components to recover valuable materials from a wind turbine generator, a solar energy device, or a battery energy storage system. Adopted new §328.401 implements THSC, Chapter 376 as enacted by HB 3229.

*§328.411, Applicability*

Adopted new §328.411 describes the applicability of Chapter 328, Subchapter M and implements THSC, Chapter 376 as enacted by HB 3229.

Subchapter M, through Subsection (a), applies to a facility involved in the recycling of components to recover valuable materials from a wind turbine generator, solar energy device, or battery energy storage system.

Subsection (b) states that compliance with this subchapter does not exempt nor exclude recycling facilities from the applicability of other local, state, or federal laws or regulations. The commission adopts this warning to place owners and operators of recycling facilities on notice that multiple other regulations are applicable to these activities. HB 3229 enacts new THSC, Chapter 376 and does not repeal or amend other applicable laws that apply to recycling activities or the management of solid waste.

Components subject to adopted new Subchapter M are also subject to other local, state, or federal requirements such as municipal solid waste, industrial solid waste, or hazardous waste management regulations, including universal waste. Components subject to this subchapter must be recycled or disposed of in a manner that complies with local, state, and federal laws and regulations. Components that are received from municipal sources must be managed, recycled, and disposed of in accordance with 30 TAC Chapter 328 and 30 TAC Chapter 330. Components that are classified as hazardous waste under 30 TAC §335.504 must be managed, recycled, and disposed of in accordance with 30 TAC Chapter 335.

The owner or operator of the recycling facility must operate the facility to prevent nuisances and disturbances and comply with applicable requirements of 30 TAC §§328.3, 330.15, or 335.4. Management of wastes subject to 30 TAC Chapter 335 that are received or generated at the facility may be required to comply with the waste classification requirements of 30 TAC Chapter 335, Subchapter R.

Recycling facilities are subject to recyclable material retention rules which prohibit speculative accumulation including 30 TAC §328.4(b) for recyclable materials derived from municipal sources, and 30 TAC §335.17(a)(8) for recyclable materials derived from industrial sources.

In response to comments, the commission adopts new §328.411(b) with changes from the proposed rule for clarity. The proposed phrase "solid waste laws" was replaced with "laws and regulations."

*§328.421, Definitions*

Adopted new §328.421 adds definitions for the terms battery energy storage system, closure, operator, owner, recycling, recycling facility, solar energy device, unrecycled components, and wind turbine generator for the purpose of adopted Subchapter M. Adopted definitions for battery energy storage system, solar energy device, and wind turbine generator uses terms consistent with THSC, Chapter 376 as enacted by HB 3229 but not explicitly defined in Chapter 376.

In response to comments, the commission adopts new §328.421(1), the definition for battery energy storage system, with changes from the proposed rule to clarify that the battery energy storage system components subject to Subchapter M are expected to come from utility scale operations. The adopted definition contains language from Texas Utility Code, §303.0001, which defines a battery energy storage resource as an electrochemical device, whether connected at the transmission or distribution level, with a capacity of one megawatt hour or greater that charges from the grid or a collocated generation resource and discharges that energy at a later time.

The definitions for closure, operator, owner, recycling, recycling facility, and unrecycled components are intended to provide context for understanding and complying with the adopted rules. The definition of closure describes the activities that must be conducted to close under Subchapter M. This definition is included to describe the activities required of the recycling facility owner or operator, typically when ceasing operations, but also in situations described in §328.441(e), to properly recycle or dispose of accepted components which results in no unrecycled components at the recycling facility or under the control of the recycling facility. In response to comments, the commission adopts new §328.421(3), which adds a definition for operator, and renumbers the remaining paragraphs to account for the added definition.

In response to comments, the commission adopts new §328.421(4), the definition for owner, with changes from the proposed rule. The adopted definition incorporates both a person who owns a recycling facility, or a person who holds title to the real property on which the recycling facility is located, including fixtures and appurtenances.

Recycling and recycling facility definitions are adopted to consistently and concisely describe what is and is not considered recycling activities and a recycling facility. Unrecycled components concisely describes components from a wind turbine generator, a solar energy device, or a battery energy storage system that have been accepted but not recycled and includes offsite components the recycling facility has assumed control of.

*§328.431, Reporting Requirements*

Adopted new §328.431 establishes reporting and cost estimate requirements for the owner or operator of a recycling facility that accepts, processes, and repurposes renewable energy components to recover valuable materials under adopted Subchapter M. New §328.431 implements THSC, §376.003 as enacted by HB 3229.

In response to comments, the commission adopts §328.431 with changes from the proposed rule which apply the reporting requirements to the owner or operator, rather than solely the owner. Adopted §328.431 requires the owner or operator of a recycling facility to submit an annual report to the executive director by January 15 of each year, on forms prescribed by the executive director. Paragraphs (1) - (3), which implement THSC, §376.003(a)(1)- (3), provide the required contents of the report, including an inventory of all unrecycled components accepted but not yet recycled, an estimated timeline for recycling or disposal, and a written cost estimate. The adopted rule requires regulated entities to use an agency prescribed form, in accordance with the commission's general statutory authority, for consistency in information submitted to executive director's staff and as a way to provide additional instruction and guidance to the regulated community.

Adopted new §328.431(3), which implements THSC, §376.003(a)(3), requires owners or operators to submit a written cost estimate, in current dollars, prepared and certified by an independent professional engineer, and describes the elements required for the cost estimate. The adopted rule requires the cost estimate to be in current dollars to ensure the cost estimate accurately calculates potential closure costs and financial assurance funding.

The commission adopts §328.431(3)(A) - (C) to require the cost estimate include the cost of hiring a third-party for offsite recycling or disposal of unrecycled components, including any disposal or recycling fees by the destination facility, and loading and transportation costs. If the commission must utilize financial assurance posted by an owner or operator of a recycling facility, the commission would incur these costs by having a third-party remove and properly recycle or dispose of unrecycled components. The activities contained in the cost estimate are common items that are required in cost estimates prepared for other recycling programs, including scrap tire (30 TAC §328.71), municipal solid waste (30 TAC §328.5(c)).

The owner or operator of a recycling facility that has no inventory of unrecycled components must still submit the report to the executive director annually. New THSC, Chapter 376 requires the commission to maintain a list of recycling facilities in compliance with THSC, Chapter 376, therefore, any recycling facility (that manages renewable energy components during the year) must report their inventory, even if that inventory is zero. The agency will use these reports to establish and maintain on the agency's website a list of recycling facilities that are in compliance with THSC, Chapter 376.

*§328.441, Financial Assurance Requirements*

Adopted new §328.441 establishes financial assurance requirements for recycling facilities to ensure adequate funds are available for the commission to properly recycle or dispose of unrecycled components in the event that the owner or operator fails to do so. Adopted new §328.441 implements THSC, §376.003(b) and (c) as enacted by HB 3229. The commission implements the statutory financial assurance requirements by utilizing existing commission financial assurance requirements, such as the specified wording of financial assurance mechanisms, and as further established in this rulemaking in 30 TAC Chapters 37 and 328. In response to comments, §328.441 is adopted with changes from the proposed rule which apply the financial assurance requirements to the owner or operator, rather than solely the owner.

The commission adopts subsection (a) to require the owner or operator of a recycling facility that accepts, processes, and repurposes components from renewable energy systems to provide financial assurance in accordance with Chapter 37, Subchapter J. Subsection (a) directs and requires the owner or operator to comply with existing financial assurance requirements in Chapter 37. An owner or operator must comply with requirements for financial assurance and mechanisms in 30 TAC Chapter 37, Subchapters A - D (except §§37.31, 37.131, 37.161, and 37.241(b) in accordance with §37.921(a)) and submit the proper financial assurance mechanism documentation with their report and cost estimate by January 15.

Subsection (b) requires the owner or operator of the recycling facility to submit evidence of financial assurance with the first annual report in an amount equal to 100 percent of the cost estimate described under §328.431. For each subsequent one-year reporting period, the owner or operator must adjust the financial assurance to ensure it remains at or above the cost estimate for the current year. Subsection (b) implements THSC, §376.003(b).

Subsection (c) specifies that financial assurance mechanisms must comply with §37.931. The financial assurance mechanisms authorized for recycling facilities subject to Subchapter M are adopted in new §37.931(3). Acceptable forms of financial assurance are a corporate guarantee, a letter of credit, or a bond. Subsection (c) generally implements THSC, §376.003(c), except that the commission adopts corporate guarantee in §37.931, instead of a parent company guaranty found in THSC, Chapter 376. A parent company guaranty is a type of corporate guarantee. A corporate guarantee may be used to demonstrate financial assurance under existing financial assurance rules in 30 TAC Chapter 37. Under Chapter 37, a corporate guarantor must be the direct or higher-tier parent corporation or a firm with a substantial business relationship with the owner or operator. Adopted §37.931(3) allows an owner or operator to use a corporate guarantee to demonstrate financial assurance for recycling facilities but limits the guarantor to a parent company in accordance with THSC, §376.003(c). The wording of the mechanisms must comply with 30 TAC Chapter 37, Subchapter D.

Subsection (d) requires the executive director to review and approve the cost estimate and documentation for the financial assurance mechanism to provide consistency of financial assurance procedures across programs and to ensure sufficient funding is available in the event the commission must perform closure. If deficiencies are noted in the cost estimate or financial assurance documentation, the executive director will communicate the deficiency within 30 days of receipt of the report. The owner or operator will be required to make appropriate changes to the cost estimate and/or financial assurance mechanism and resubmit the revised documents, if deficiencies are noted. The executive director will include a deadline for revisions when communicating deficiencies. When approved, the executive director will communicate approval to the owner or operator and publish the name of the recycling facility on the agency's website as required by THSC, §376.004. To help ensure proper estimation and compliant financial mechanisms are submitted, draft cost estimates and financial assurance documents may be submitted for "preliminary" review by the executive director, as long as the final documents are submitted by January 15.

When reporting for subsequent years, increases or decreases to the facility's cost estimate and financial assurance will be handled in a similar manner as described above and following 30 TAC §37.141 and §37.151, with the exception of when the owner or operator submits a decreased financial assurance mechanism. Updating financial assurance should generally be conducted with the annual report due by January 15. Updating financial assurance outside of this cycle should only occur if the owner or operator needs to change the type of financial assurance mechanism or permanently terminate the mechanism and should not be used to lower financial assurance during the operating year.

Financial assurance must be terminated in accordance with 30 TAC §37.61. The owner or operator must submit to the executive director a written request to terminate the financial assurance mechanism for the recycling facility and must include documentation that all unrecycled components have been recycled or disposed of and no additional components will be accepted. The executive director may conduct a site inspection to confirm the recycling facility has ceased operations and properly removed unrecycled components. If no issues are noted, the executive director will release the financial assurance mechanism. The owner or operator should terminate the financial assurance only when ceasing operations with no plans on restarting. If an owner or operator has no unrecycled components during a reporting period but plans to continue recycling operations, the owner or operator may follow the procedures to decrease financial assurance instead of terminating their financial assurance.

For facilities that are required to obtain financial assurance under Subchapter M and financial assurance under another program, the owner or operator may follow the allowances in §37.52. The universal mechanism must be a corporate guarantee, a letter of credit, or a bond, as required under amended §37.931. And the existing financial assurance must cover the cost estimate activities in §328.431(a)(3). Additionally, the owner or operator is still required to submit the annual report, including the cost estimate, and financial assurance documentation, to demonstrate adequate coverage under Subchapter M.

Subsection (e) identifies the circumstances under which the owner or operator of a recycling facility subject to Subchapter M is required to perform closure. The purpose of financial assurance can only be implemented by making the commission the beneficiary of the financial assurance and allowing the commission to call on the financial assurance. Therefore, the commission adopts the circumstances under which an owner or operator must perform closure and, if not properly conducted, the commission is authorized to call on the financial assurance in subsection (e).

The owner or operator's failure to perform closure allows the executive director to call on the financial assurance under §37.101. When an owner or operator has received a written violation from the commission, the owner or operator will have an opportunity to address the violation(s) or receive an order from the commission. If the owner or operator fails to address the violation(s), the owner or operator will be required to perform closure as described in Subchapter M. The violation(s) include: 1) when unrecycled components have been speculatively accumulated; 2) when unrecycled components cause the discharge or imminent threat of discharge of contaminants into or adjacent to the waters in the state; 3) when unrecycled components create or maintain a nuisance; or 4) when unrecycled components endanger the public health and welfare. The owner or operator must also perform closure when directed by the executive director. For the purpose of Subchapter M, the term contaminant is consistent with the definition for "contaminant" in THSC, §361.601. Speculative accumulation occurs when unrecycled components accumulate and have no feasible means of being recycled and when at least 75% by weight or volume of the accumulated unrecycled components remain unrecycled for the one-year reporting period.

Subsection (f) authorizes the executive director to receive and spend funds as the beneficiary of the financial assurance provided in accordance with this subchapter. THSC, Chapter 376 requires the owner of the recycling facility to submit evidence of financial assurance to the agency. The commission adopts subsection (f) to authorize the executive director to receive and spend funds as a beneficiary of the financial assurance required by Subchapter M in accordance with the commission's general statutory authority.

*§328.451, Recordkeeping Requirements*

In response to comments, §328.451 is adopted with changes from the proposed rule which apply the recordkeeping requirements to the owner or operator, rather than solely the owner. Adopted new §328.451 establishes recordkeeping requirements for owners or operators of recycling facilities subject to Chapter 328, Subchapter M to ensure recycling facilities maintain accurate and verifiable documentation of recycling and disposal activities. Under the adopted rule, the owner or operator of a recycling facility is required to maintain records for a minimum of three years in addition to any local, state, or federal recordkeeping requirements. Examples of records include manifests, bills of lading, quantities of components recycled onsite or offsite, waste disposal records, or other documentation used in annual reports submitted to the executive director.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted new rules implement HB 3229 from the 89th Texas Legislature, Regular Session, 2025. HB 3229 requires the owner of a recycling facility that accepts, processes, and repurposes components from a wind turbine generator, a solar energy device, or a battery energy storage system to submit a report to the agency and provide financial assurance. The adopted rules implement HB 3229 by establishing the requirements for the submitted report and financial assurance. The reporting requirement and financial assurance requirement would apply to the owner of a recycling facility under THSC, Chapter 376 in the absence of these rules. Because the adopted rules implement reporting and financial assurance requirements, the adopted rules do not change any existing requirements that protect the environment or reduce risks to human health from environmental exposure, nor do the adopted rules affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The adopted rules do not exceed a standard set by federal law. The adopted amendments do not exceed an express requirement of state law or a requirement of a delegation agreement. These rules were not developed solely under the general powers of the agency but are authorized by specific sections of the THSC and TWC, that are cited in the statutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The adopted new rules implement HB 3229 from the 89th Texas Legislature, Regular Session, 2025. The adopted new rules in Chapter 328 do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the adopted rules. The adopted rules in Chapter 328 establish reporting and financial assurance requirements for the owner of a recycling facility that accepts, processes, and repurposes components from a wind turbine generator, a solar energy device, or a battery energy storage system. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program (CMP) during the public comment period. There were no comments received regarding the CMP.

Public Comment

The commission offered public hearings on April 23, 2026 and April 27, 2026. The comment period closed on April 27, 2026. The commission received comments from Harris County Pollution Control Services (HCPCS), one individual (IND), and the Lone Star Chapter of the Sierra Club (LSCSC). One commenter was in support of the rules; no commenters were against the rules; one commenter requested clarification of the rules; and two commenters suggested changes to the proposed rules.

Response to Comment

*Comment*

LSCSC commented in support of the proposed rules and the reporting deadline of January 15th. LSCSC agrees with the financial assurance criteria, including the contents of the cost estimate, the requirements for financial assurance to be maintained in current dollars, and that TCEQ can use the financial assurance as needed.

Response

The commission acknowledges the support. No changes have been made in response to this comment.

*Comment*

HCPCS requested the rule language in 30 TAC §328.411(b) be expanded to clarify that compliance with the proposed rules does not exempt nor exclude recycling facilities from other local, state, or federal rules, regulations, or laws, rather than specifying solid waste laws.

Response

In response to this comment, the commission revised adopted rule language in §328.411(b) by replacing the phrase "solid waste laws" with "laws and regulations" for clarity.

*Comment*

IND requested clarification of what qualifies as a "Battery Energy Storage System" and whether all battery handlers of any kind would be subject to HB 3229 and the rulemaking.

Response

In response to this comment, the commission added rule language to the adopted definition for "Battery energy storage system" in 30 TAC §328.421 to more clearly describe the devices subject to this rulemaking, which are those from utility scale operations.

*Comment*

HCPCS requested TCEQ revise the proposed definition for owner in 30 TAC §328.421(3) to identify the owner as the facility owner instead of the property owner. HCPCS also requested TCEQ revise the rules to require the facility owner and/or facility operator to comply with the reporting and financial assurance requirements.

Response

In response to this comment, the commission revised adopted §328.421 to include the recycling facility owner in the definition for owner and a definition for operator, and adopted §§328.431, 328.441, and 328.451 to allow the owner or operator to comply with the requirements of the new subchapter.

*Comment*

HCPCS requested TCEQ revise the proposed definition for closure in 30 TAC §328.421(2) to read "The act of collecting all components accepted by the recycling facility, and properly recycling or disposing of the components, which results in taking the facility out of service."

Response

THSC, Chapter 376 does not authorize the commission to take a recycling facility out of service. Further, a recycling facility is not required to be taken out of service for TCEQ to draw on the financial assurance and conduct closure activities. No changes have been made in response to this comment.

*Comment*

HCPCS requested TCEQ revise 30 TAC §328.431(3) and §328.441 to include remediation and decontamination in the cost estimate and financial assurance. HCPCS also requested TCEQ consider transportation costs for rural areas when reviewing cost estimate.

Response

While recycling facilities may be subject to these costs under other solid waste financial assurance programs, THSC, Chapter 376 does not authorize the commission to account for remediation and decontamination, only for "recycling or disposing of the (unrecycled) components." In accordance with this statutory provision, the commission adopts §328.431(3)(C) requiring the recycling facility to include "the cost for transporting unrecycled components offsite to an authorized recycling or disposal facility" in the cost estimate and will consider these costs in the review of the cost estimate. No changes have been made in response to this comment.

*Comment*

HCPCS requested TCEQ provide staff training and to anticipate increased delays in permit reviews and inspections related to the location of wind generators in primarily rural areas.

Response

It is not clear what staff training was requested by the commenter. The commission is required to fully implement passed legislation and ensure that staff involved in the regulation of recycling facilities under THSC, Chapter 376 and this subchapter are equipped with the skills and resources to do so. No changes have been made in response to this comment.

*Comment*

HCPCS requested TCEQ expand the recordkeeping requirements in §328.451 to include standards similar to those required to be kept for scrap tire storage or transfer stations, such as training and inspection logs, site operating and fire plans, and location of the records.

Response

The commission believes the records required under proposed §328.451 will be adequate to determine compliance with THSC, Chapter 376 and this subchapter. Additional recordkeeping requirements under other agency programs will continue to apply to recycling facilities. No changes have been made in response to this comment.

*Comment*

HCPCS requested TCEQ implement a fee program to create a fund for the cleanup of future abandoned or unauthorized renewable energy recycling facilities.

Response

THSC, Chapter 376 authorizes financial assurance for recycling facilities, but does not authorize the commission to collect a fee. No changes have been made in response to this comment.

*Comment*

LSCSC suggested TCEQ incorporate the requirement for TCEQ to maintain the list of compliant recycling facilities on the commission's website and who reports into the rules.

Response

The requirement for the commission to post the list of facilities complying with the statute is contained in THSC, §376.004, and is wholly applicable to the commission. Additionally, it is not necessary to duplicate the statutory requirement without clarification or additions. No changes to rule made in response to this comment.

Statutory Authority

The new rules are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; Texas Health and Safety Code (THSC), §361.011, which confers the commission authority for the management of municipal solid waste; and THSC, §361.017, which confers the commission responsibility for the management of industrial solid waste and hazardous municipal waste and provides authority to control all aspects of the management of industrial solid waste and municipal hazardous waste by all practical and economically feasible methods consistent with its powers and duties under THSC, Chapter 361 and other law, and THSC, Chapter 376 which establishes requirements for renewable energy component recycling facilities.

The adopted rules implement House Bill (HB) 3229, 89th Texas Legislature, Regular Session, 2025, and THSC, Chapters 361 and 376.

*§328.411. Applicability.*

(a) This subchapter is applicable to a recycling facility that accepts, processes, and repurposes components to recover valuable materials from a wind turbine generator, a solar energy device, or a battery energy storage system.

(b) Compliance with provisions of this subchapter does not exempt nor exclude the applicability of other local, state or federal laws and regulations.

*§328.421. Definitions.*

The following terms, when used in this subchapter, have the following meanings.

(1) Battery energy storage system--A battery energy storage system, including battery cells, racks, containers, inverters, battery management systems, cooling and fire suppression systems, and cables, is an electrochemical device, whether connected at the transmission or distribution level, with a capacity of 1 megawatt hour or greater, that charges from the grid or a co-located generation resource and discharges that energy at a later time.

(2) Closure--The act, outside of daily operations, of collecting all components accepted from a wind turbine generator, a solar energy device, or a battery energy storage system, including any components the recycling facility has taken title to or assumed control of regardless of whether the components are located at the recycling facility, and properly recycling or disposing of the components.

(3) Operator--A person responsible for the overall operation of a recycling facility.

(4) Owner--A person who owns a recycling facility, or a person who has title to the real property on which a recycling facility is located.

(5) Recycling--A process by which components of a wind turbine generator, solar energy device, or battery energy storage system, that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials or feedstocks used in the manufacture of new products. A use of components that constitutes disposal or that releases contaminants into the environment is not recycling under this subchapter.

(6) Recycling facility--All contiguous land and structures, other appurtenances, and improvements on the land used for the recycling of components from a wind turbine generator, a solar energy device, or a battery energy storage system. The term includes a facility that has accepted or plans to accept unrecycled components for recycling and has not yet ceased operations.

(7) Solar energy device--A solar energy device, as defined by Utilities Code, §185.001, including solar modules, junction boxes, transformers, inverters, racks or trackers, and cables.

(8) Unrecycled components--Components from a wind turbine generator, a solar energy device, or a battery energy storage system that are accepted by the recycling facility for recycling that have not yet been recycled or used as a product. The term includes any components the recycling facility has taken title to or assumed control of regardless of whether the components are located at the recycling facility.

(9) Wind turbine generator--A wind turbine generator, including turbine blades, nacelles, nacelle covers, towers, drivetrains, generators, magnets, power electronics, and cables.

*§328.431. Reporting Requirements.*

Using forms prescribed by the executive director, the owner or operator of a recycling facility that has accepted unrecycled components for recycling shall submit a report to the executive director no later than January 15 of each year that includes:

(1) an inventory of all unrecycled components;

(2) an estimated timeline for recycling or disposing of the unrecycled components; and

(3) a written cost estimate for hiring a third-party to recycle or dispose of the unrecycled components, prepared by an independent, third-party Texas licensed professional engineer, in current dollars, that includes:

(A) the cost for offsite recycling or disposal of the inventory of unrecycled components, including any fees charged by the destination facility;

(B) the cost for loading unrecycled components into appropriate vehicles for offsite transportation; and

(C) the cost for transporting unrecycled components offsite to an authorized recycling or disposal facility.

*§328.441. Financial Assurance Requirements.*

(a) Financial assurance required for closure of the recycling facility shall be provided by the owner or operator of the recycling facility in accordance with applicable requirements of Chapter 37, Subchapter J of this title (relating to Financial Assurance for Recycling Facilities).

(b) The owner or operator of the recycling facility shall:

(1) submit with the recycling facility's first report required by §328.431 of this title (relating to Reporting Requirements), evidence of financial assurance in an amount equal to 100 percent of the cost estimate described under §328.431 of this title; and

(2) submit with each subsequent report any additional financial assurance necessary to ensure that the amount of financial assurance the owner or operator has on file with the commission for the recycling facility is at least equal to 100 percent of the cost estimate under §328.431 of this title in the subsequent report.

(c) The financial assurance mechanism used to secure financial assurance in accordance with this section must comply with §37.931 of this title (relating to Financial Assurance Mechanisms).

(d) The executive director will review and approve the cost estimate and financial assurance mechanism provided by the owner or operator. If revisions are required for the executive director to approve, the owner or operator must submit an appropriately revised cost estimate or financial assurance mechanism within timeframes specified by the executive director.

(e) Unless subject to a contrary provision of an order of the commission or an order of a court of competent jurisdiction, the owner or operator of a recycling facility must perform closure:

(1) when unrecycled components have been speculatively accumulated as established under §328.4 (relating to Limitations on Storage of Recyclable Materials) or §335.17(a)(8) (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials);

(2) if unrecycled components cause the discharge or imminent threat of discharge of a contaminant into or adjacent to waters in the state without specific authorization from the commission;

(3) if unrecycled components create or maintain a nuisance;

(4) if unrecycled components endanger the public health and welfare; or

(5) if directed to perform closure by the executive director.

(f) The executive director is authorized to receive and spend funds as a beneficiary of financial assurance established in this subchapter.

*§328.451. Recordkeeping Requirements.*

In addition to other applicable recordkeeping requirements under local, state, or federal law, the owner or operator of a recycling facility must maintain records for activities conducted under this subchapter for a minimum of three years including but not limited to manifests, bills of lading, records of quantities of components recycled onsite or offsite, records of waste disposal, and any documentation used to establish the information reported to the executive director under §328.431 (relating to Reporting Requirements). The owner or operator of the recycling facility must furnish to the executive director, upon request and within a reasonable time, records maintained under this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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# TITLE 31. NATURAL RESOURCES AND CONSERVATION

## PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

## CHAPTER 65. WILDLIFE
## SUBCHAPTER A. STATEWIDE HUNTING PROCLAMATION
## DIVISION 2. OPEN SEASONS AND BAG LIMITS

### 31 TAC §65.42

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 20, 2026, adopted an amendment to 31 TAC §65.42, concerning Deer, without changes to the proposed text as published in the July 17, 2026, issue of the *Texas Register* (51 TexReg 4683). Therefore, the proposed text will not be republished.

The amendment alters provisions governing the take of mule deer by archery equipment to eliminate calendar conflict and allows the use of firearms for the take of white-tailed deer on properties in Collin, Dallas, Grayson, and Rockwall counties that are enrolled in the department's Managed Lands Deer Program (MLDP) and meet fencing requirements established in the rule.

Under current rule, the take of white-tailed deer in Collin, Dallas, Grayson, and Rockwall counties is restricted to lawful archery equipment, including on properties enrolled in the MLDP (a habitat improvement program in which participants agree to a harvest quota specified by the department in exchange for enhanced bag limits and extended season dates). The department has received a petition for rulemaking requesting that firearms be made lawful means for the harvest of deer on MLDP properties in the affected counties, provided the property is surrounded by a high fence. The department has determined that there is no biological reason to restrict the means of take for white-tailed deer in Collin, Dallas, Grayson, and Rockwall counties generally, and certainly not on high-fenced properties enrolled in the MLDP; therefore, any lawful means may be used to take white-tailed deer in the affected counties, provided the property is enrolled in the MLDP and surrounded by a fence of least seven feet in height that is capable of retaining deer at all times. The seven-foot value was selected because it is a generally accepted standard and is the standard used in other department regulations governing deer management.

In a previous rulemaking, the commission lengthened archery seasons for mule deer. In the process, an inadvertent calendar conflict was created with other mule deer seasons, which could cause confusion. The amendment remedies that issue.

The department received 11 comments opposing adoption of the portion of the proposed rule that provides an open general season in Collin, Dallas, Grayson, and Rockwell counties on high-fenced properties enrolled in the Managed Lands Deer Program. Of those comments, 10 articulated a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow. The department notes that because some comments consisted of multiple points or components, the department has organized the response to public comment accordingly; therefore, the number of responses is greater than the number of commenters.

Six commenters opposed adoption and stated in various ways that the rules were catering to a very small number of people.

The department disagrees with the comments and responds that the rule is intended to provide additional management flexibility to all landowners and land managers in the affected counties. No changes were made as a result of the comments.

One commenter opposed adoption and stated that lawful means for deer harvest should remain restricted to lawful archery equipment, but crossbows should be excluded. The department disagrees with the comment and responds that the intent of the rule is to liberalize means of take in the affected counties and there is no biological reason not to do so; therefore, restricting means of take to lawful archery equipment other than crossbow would defeat the intent of the rule. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that public safety could be compromised if the harvest of deer by firearms becomes lawful. The department disagrees with the comments and responds that it is already lawful in the affected counties to discharge firearms for other purposes (when not specifically prohibited by local ordinance), such as target shooting, and it is currently lawful to hunt species other than deer by firearm in the affected counties, including by centerfire firearms. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that overpopulation on high-fenced properties is the result of poor land management and therefore the rule would reward poor management. The department disagrees with the comment and responds that the department firmly believes that management decisions on private property are the purview of individual landowners and land managers, who operate under a basic regulatory framework that provides for an adequate supply of the resource for the enjoyment of the public. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rule would create "expanded hunting privileges unavailable to neighboring landowners". The department disagrees with the comment and responds that the rule as adopted creates additional management flexibility for interested landowners and land managers and does not create a privilege for any landowner that does not also exist for all other landowners. No changes were made as a result of the comment.

One commenter opposed the adoption and stated that the rule would affect seasonal buck harvest in a way that would disrupt age structures that have taken many years to develop. The department disagrees with the comment and responds that individual landowners and land managers are in the best position to determine appropriate harvest strategies on their own properties under the general regulatory frameworks provided by seasons and bag limits (and in the case of landowners participating in the MLDP program, the department establishes harvest quotas for the property). No changes were made as a result of the comment.

One commenter opposed the adoption and stated that high fences are a violation of the Public Trust Doctrine. The department disagrees with the comment and responds that under Parks and Wildlife Code, §1.013, a landowner may construct or maintain fences of any height without affecting the status of wild animals as the property of the people of the state; therefore, there is no conflict with the principle of public trust with respect to wildlife resources. No changes were made as a result of the comment.

Two commenters opposed the adoption and stated that the rule will encourage landowners to erect high fences and result in increased land fragmentation. The department disagrees with the comments and responds that fencing on private property is at the discretion of the property owner and, as noted previously in a response to another comment, the department by statute may not prohibit or restrict the owner or occupant of land from constructing or maintaining a fence of any height on the land owned or occupied. The department further notes that all of the affected counties have experienced rapid and extensive urbanization and land fragmentation over the last 50 years that is unrelated to the department's harvest regulations. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the rule encourages commercialization and shifts focus away from conservation. The department disagrees with the comments and responds that the department's harvest regulations are resource-focused, habitat-driven, and do not consider the commercial goals, if any, of individual landowners and land managers, other than to ensure a plentiful supply of the resource for public enjoyment, which is at the discretion of the landowner. No changes were made as a result of the comments.

The department received one comment opposing adoption of the portion of the proposed amendment correcting the calendar conflict in mule deer harvest rules. The commenter stated that it is "not necessary to change bow hunting mule deer." The department disagrees with the comment and responds that the rule as adopted does not alter any provision of law regarding mule deer other than to clearly indicate the times when harvest is restricted to archery equipment and the times when harvest is by any lawful means. No changes were made as a result of the comment.

The department received 19 comments supporting adoption of the rule as proposed.

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 9, 2026.

TRD-202603939
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: September 29, 2026
Proposal publication date: July 17, 2026
For further information, please call: (512) 389-4775

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# TITLE 40. SOCIAL SERVICES AND ASSISTANCE

## PART 20. TEXAS WORKFORCE COMMISSION

### CHAPTER 853. INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND

The Texas Workforce Commission (TWC) adopts amendments to the following sections of Chapter 853, relating to Independent Living Services for Older Individuals Who Are Blind:

Subchapter A. Independent Living Services for Older Individuals Who Are Blind, §853.2 and §853.4

Subchapter B. Services, §853.10 and §853.11

Subchapter C. Customer Financial Participation, §853.20 and §853.21

Amended §§853.2, 853.4, 853.10, 853.11, 853.20, and 853.21 are adopted without changes to the proposal, as published in the July 10, 2026, issue of the *Texas Register* (51 TexReg 4525), and, therefore, the adopted rule text will not be published.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the Chapter 853 rule change is to ensure alignment with the recently updated Older Individuals Who Are Blind (OIB) Policy Manual (OIB policy manual), as well as applicable state and federal regulations. Following a comprehensive review, discrepancies were identified between the current Chapter 853 and updated program policy. The proposed rule amendments address those inconsistencies and incorporate minor revisions to improve clarity, consistency, and overall readability. The updates support accurate implementation of the OIB program, reinforce compliance with governing authority under 34 Code of Federal Regulations, Part 367, and align rules with the requirements outlined in the OIB policy manual.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. Independent Living Services for Older Individuals Who Are Blind

TWC adopts amendments to Subchapter A, as follows:

§853.2. Referral

Section 853.2 is amended to clarify the definition and scope of minimal services by specifying examples of services included and incorporating independent living skills training that can be effectively delivered with no more than one or two face-to-face visits by OIB program staff to an individual receiving services. The revision ensures consistency with current program practices and provides clear guidance to staff for appropriate service delivery.

§853.4. Application

Section 853.4 is amended to replace electronic "PIN" with electronic "signature" to align the rule with the OIB program's practices.

SUBCHAPTER B. Services

TWC adopts amendments to Subchapter B, as follows:

§853.10. Independent Living Plan

Section 853.10 is amended to remove the reference to form 5154, which has been retired, and updates the section to reflect the current process. The revision ensures accuracy, eliminates outdated information, and provides clear guidance aligned with current program procedures.

§853.11. Scope of Services

Section 853.11 is amended to clarify that training in using technology and independent living skills may be provided to OIB customers.

SUBCHAPTER C. Customer Financial Participation

TWC adopts amendments to Subchapter C, as follows:

§853.20. Individuals Who Receive Social Security Income or Social Security Disability Insurance

Section 853.20 is amended to clarify that customers receiving certain types of Social Security benefits are exempt from cost participation for OIB services. The revision ensures consistency with program policy and provides clear guidance regarding eligibility for services at no cost.

§853.21. Customer Participation in the Cost of Services

Section 853.21 is amended to remove subsection (c) due to an inaccurate reference to §853.11 regarding cost participation. Current §853.21(c) does not clearly specify which services are exempt from customer participation. Removing this subsection eliminates potential confusion and ensures the rule accurately reflects program policy.

TWC hereby certifies that the rules have been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART III. PUBLIC COMMENTS

The comment period ended on August 10, 2026. No comments were received.

### SUBCHAPTER A. INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND

**40 TAC §853.2, §853.4**

PART IV. STATUTORY AUTHORITY

The rules are adopted under:

--Texas Labor Code, §352.103(a), which provides TWC with the authority to establish rules for providing vocational rehabilitation services; and

--Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules relate to Title 4, Texas Labor Code, particularly Chapter 352.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 8, 2026.

TRD-202603915
Les Trobman
General Counsel
Texas Workforce Commission
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Proposal publication date: July 10, 2026
For further information, please call: (737) 301-9662

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## SUBCHAPTER B. SERVICES

### 40 TAC §853.10, §853.11

The rules are adopted under:

--Texas Labor Code, §352.103(a), which provides TWC with the authority to establish rules for providing vocational rehabilitation services; and

--Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules relate to Title 4, Texas Labor Code, particularly Chapter 352.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER C. CUSTOMER FINANCIAL PARTICIPATION

### 40 TAC §853.20, §853.21

The rules are adopted under:

--Texas Labor Code, §352.103(a), which provides TWC with the authority to establish rules for providing vocational rehabilitation services; and

--Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules relate to Title 4, Texas Labor Code, particularly Chapter 352.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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