

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 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER B. GRADUATION REQUIREMENTS

19 TAC §74.12, §74.13

The State Board of Education (SBOE) adopts amendments to §74.12 and §74.13, concerning graduation requirements. The amendment to §74.12 is adopted without changes to the proposed text as published in the May 17, 2024 issue of the *Texas Register* (49 TexReg 3465) and will not be republished. The amendment to §74.13 is adopted with changes to the proposed text as published in the May 17, 2024 issue of the *Texas Register* (49 TexReg 3465) and will be republished. The amendments update titles of courses and career and technical education (CTE) career clusters, align all CTE programs of study with endorsements, and make technical edits.

REASONED JUSTIFICATION: In November 2020, the SBOE adopted revisions to the Texas Essential Knowledge and Skills (TEKS) for physical education (PE) with an effective date of August 1, 2022. The revisions to the TEKS for the high school PE courses revised the amount of credit available to one credit for each course. The adopted amendment to §74.12 makes a technical edit to update the amount of credit associated with these courses to one credit. Additionally, the adopted amendment revises the language for PE substitutions to align with the reduction in the number of high school PE courses.

At the November 2021 SBOE meeting, the board approved for second reading and final adoption revised CTE TEKS, which have historically been codified in 19 TAC Chapter 130. To accommodate the addition of these new courses and future courses, the SBOE took action to begin moving the CTE TEKS in Chapter 130 to existing 19 TAC Chapter 127, Texas Essential Knowledge and Skills for Career Development, and to rename the chapter "Texas Essential Knowledge and Skills for Career Development and Career and Technical Education." CTE subchapters are being moved from Chapter 130 to Chapter 127 as the TEKS are revised by the SBOE. In November 2021, the board gave final approval to new 19 TAC Chapter 127, Subchapters G, I, J, M, and O. At the January 2022 SBOE meeting, the board took action to repeal the associated subchapters from Chapter 130 and move the sections to Chapter 127. In April 2022, the graduation requirements in 19 TAC §74.11 and §74.13 were updated to reflect the move of CTE TEKS from Chapter 130 to Chapter 127 and the new title for Chapter 127.

In November 2023, the board took action to approve revisions to the CTE TEKS for career preparation and entrepreneurship courses. The adopted amendment to §74.13 updates titles of CTE courses and career clusters to align with these revisions.

Texas recently refreshed state-level programs of study to ensure coherent and rigorous content with challenging academic standards and relevant career and technical content. Programs of study are aligned with state and regional labor market information, including high-wage, high-skill, and in-demand occupations. When the rule for endorsements was first adopted, programs of study were determined locally rather than at the state level. The adopted amendment to §74.13 ensures all programs of study are specifically aligned to an endorsement and eliminates language related to coherent sequences of CTE courses that is outdated.

The following changes were made since published as proposed.

Section 74.13(f)(6)(D) was amended by replacing the phrase "in addition to Algebra II, chemistry, and physics, a coherent sequence of three additional credits from no more than two of the categories or disciplines represented by subparagraphs (A), (B), and (C) of this paragraph" with the phrase "in addition to chemistry, physics, and Algebra II, one additional mathematics course listed in subsection (e)(2) of this section for which Algebra II is a prerequisite and one additional science course listed in subsection (e)(6) of this section."

Section §74.13(f)(7)(D), which would have allowed a student who entered high school in the 2022-2023 school year or later to earn a business and industry endorsement by completing the requirements in §74.13(e) and a coherent sequence of four credits from §74.13(f)(7)(A), (B), or (C), was deleted.

The SBOE approved the amendments for first reading and filing authorization at its April 12, 2024 meeting and for second reading and final adoption at its June 28, 2024 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the amendments for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2025-2026 school year. The earlier effective date will allow districts of innovation that begin school prior to the statutorily required start date to implement the proposed rulemaking when they begin their school year. The effective date is August 1, 2024.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began May 17, 2024, and ended at 5:00 p.m. on June 17, 2024. The SBOE also provided an opportunity for registered oral and written comments at its June 2024 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and corresponding responses.

Comment. Two teachers and one parent expressed concern that students are being asked to make career choices at a young age when they do not know what career they want to pursue. The commenters explained that districts are placing grade-level restrictions on introductory CTE courses, which prevents students from taking courses outside of their chosen program of study during a time when students should be exploring career options since it is less expensive in high school than during college.

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

Comment. One counselor and one administrator asked whether proposed changes to endorsements would negatively impact students by requiring a student to be a CTE completer versus earning four or more credits in CTE with at least two courses in the same program of study and one advanced course. The commenters asked whether a student in this situation must graduate under the Foundation High School Program without an endorsement.

Response. The SBOE provides the following clarification. The proposed amendment would require students to complete a program of study to earn an endorsement in business and industry, public services, and science, technology, engineering, and mathematics (STEM) beginning with students who entered Grade 9 in 2022-2023 or later. However, the multidisciplinary endorsement would continue to be an option and provide flexibility for non-completer students.

Comment. One counselor expressed support for adding options to earn an endorsement by completing a program of study but expressed opposition to removing students' flexibility to choose courses and explore careers. The commenter explained that students often want to change their programs of study, which makes it difficult to complete a program of study and graduate with an endorsement under the proposed rules.

Response. The SBOE disagrees that the proposed changes would make it difficult for a student who changes programs of study to earn an endorsement. The multidisciplinary endorsement would continue to be an option and provide flexibility for non-completer students.

Comment. One administrator and one teacher stated that skills covered in debate are fundamental communication skills needed in almost every career and should be included as a way to complete a CTE program of study.

Response. This comment is outside the scope of the proposed rulemaking. Additionally, the SBOE provides the following clarification. CTE programs of study are established by the Texas Education Agency (TEA), not the SBOE.

Comment. One teacher expressed support for the creation of a CTE program of study for speech communication that has a corresponding certification exam. The commenter stated that it was a disservice to remove speech from the graduation requirements and that hiring managers in every industry have expressed dissatisfaction with the communication skills shown by most high school graduates.

Response. This comment is outside the scope of the proposed rulemaking. Additionally, the SBOE provides the following clarification. CTE programs of study are established by TEA, not the SBOE.

Comment. One administrator asked whether the proposed amendment to 19 TAC §74.13(f)(6)(D) and (7)(D) for the STEM

and business and industry endorsements would allow a local education agency to determine a coherent sequence of courses from any of the CTE programs of study listed within those sections, such as two courses from civil engineering and two courses from electrical engineering.

Response. The SBOE provides the following clarification. Under the proposed rule, students would not be able to combine courses from different programs of study to earn the STEM endorsement under §74.13(f)(6)(D) or (7)(D). In response to this and other comments, the SBOE took action to clarify the rule by amending §74.13(f)(6)(D) to read, "in addition to chemistry, physics, and Algebra II, one additional mathematics course listed in subsection (e)(2) of this section for which Algebra II is a prerequisite and one additional science course listed in subsection (e)(6) of this section." The SBOE also took action to strike proposed §74.13(f)(7)(D), which would have allowed a student who entered high school in the 2022-2023 school year or later to earn a business and industry endorsement by completing the requirements in §74.13(e) and a coherent sequence of four credits from §74.13(f)(7)(A), (B), or (C).

Comment. One administrator expressed concern that to earn an endorsement, a student must complete a program of study.

Response. The SBOE disagrees and has determined that the completion of a program of study as one of multiple options to earn the STEM, business and industry, and public services endorsements is appropriate.

Comment. One administrator stated that it is difficult to keep up with the changes that are being made to programs of study, CTE program of study completer requirements, and college, career, and military readiness indicators. The commenter expressed concern that some of the proposed changes would be applied retroactively, affecting students in Grade 11, which would make it difficult for those students to meet the requirements to earn an endorsement.

Response. The SBOE disagrees and has determined that implementation of the proposed changes to the endorsements beginning with students who entered Grade 9 during the 2022-2023 school year provides sufficient time for rising juniors to complete a program of study.

Comment. One administrator expressed concern that under the proposed amendment, a student who completes a CTE engineering program of study would no longer be able to earn a business and industry endorsement. The commenter explained that the business and industry endorsement is currently an option for students who may complete a program of study in engineering but who do not satisfy the STEM endorsement.

Response. The SBOE disagrees. The proposed amendment includes an option for designated CTE completers in certain programs of study, including programs of study in engineering, to earn the business and industry endorsement if the mathematics and science requirements for the STEM endorsement are not met.

Comment. One administrator asked why, under the proposed amendment, some programs of study such as animal science would no longer satisfy a STEM endorsement.

Response. The SBOE provides the following clarification. Programs of study were identified for the different endorsement options based on the coursework required under each program of study.

Comment. One counselor expressed support for the proposed changes to endorsements. The commenter explained that current endorsement requirements are difficult to explain and that the streamlined proposed rule would be helpful.

Response. The SBOE agrees and took action to adopt proposed amendments to 19 TAC Chapter 74, Subchapter B, as amended.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.025(a), which requires the SBOE to determine by rule the curriculum requirements for the foundation high school program that are consistent with the required curriculum and requires the SBOE to designate specific courses that are required for the foundation high school program; TEC, §28.025(b-17), which requires the SBOE to adopt rules that ensure a student who successfully completes an advanced career and technical education course, including a course that may lead to an industry-recognized credential or certificate or an associate degree, may comply with elective requirements for graduation; and TEC, §28.025(c-1), which requires the SBOE to adopt rules regarding earning an endorsement.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §7.102(c)(4) and §28.025(a), (b-17), and (c-1).

§74.13. *Endorsements.*

(a) A student shall specify in writing an endorsement the student intends to earn upon entering Grade 9.

(b) A district shall permit a student to enroll in courses under more than one endorsement before the student's junior year and to choose, at any time, to earn an endorsement other than the endorsement the student previously indicated. This section does not entitle a student to remain enrolled to earn more than 26 credits.

(c) A student must earn at least 26 credits to earn an endorsement.

(d) A school district may define advanced courses and determine a coherent sequence of courses for an endorsement area, provided that prerequisites in Chapters 110-117, 127, and 130 of this title are followed.

(e) To earn an endorsement a student must demonstrate proficiency in the following.

(1) The curriculum requirements for the Foundation High School Program as defined by §74.12 of this title (relating to Foundation High School Program).

(2) A fourth credit in mathematics that may be selected from one full credit or a combination of two half credits from two different courses, subject to prerequisite requirements, from the following courses:

- (A) Algebra II;
- (B) Precalculus;
- (C) Advanced Quantitative Reasoning;
- (D) Independent Study in Mathematics;
- (E) Discrete Mathematics for Problem Solving;
- (F) Algebraic Reasoning;
- (G) Statistics;

(H) a comparable Advanced Placement (AP) mathematics course that does not count toward another credit required for graduation;

(I) AP Computer Science A;

(J) International Baccalaureate (IB) Computer Science Higher Level;

(K) Engineering Mathematics;

(L) Statistics and Business Decision Making;

(M) Mathematics for Medical Professionals;

(N) Discrete Mathematics for Computer Science;

(O) pursuant to the Texas Education Code (TEC), §28.025(b-5), after the successful completion of Algebra II, a mathematics course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The Texas Education Agency (TEA) shall maintain a current list of courses offered under this subparagraph; and

(P) after the successful completion of Algebra I and Geometry, a locally developed mathematics course or other activity, including an apprenticeship or training hours needed to obtain an industry-recognized credential or certificate that is developed pursuant to the TEC, §28.002(g-1).

(3) A student may complete a course listed in paragraph (2) of this subsection before or after completing a course listed in §74.12(b)(2)(A) of this title.

(4) The fourth mathematics credit may be a college preparatory mathematics course that is developed and offered pursuant to the TEC, §28.014.

(5) The fourth mathematics credit may be satisfied with one credit of a two-credit IB mathematics course selected from Chapter 111 of this title (relating to Texas Essential Knowledge and Skills for Mathematics) that does not count toward another credit required for graduation.

(6) An additional credit in science that may be selected from one full credit or a combination of two half credits from two different courses, subject to prerequisite requirements, from the following courses:

(A) Chemistry;

(B) Physics;

(C) Aquatic Science;

(D) Astronomy;

(E) Earth Systems Science;

(F) Environmental Systems;

(G) Specialized Topics in Science;

(H) a comparable AP science course that does not count toward another credit required for graduation;

(I) Advanced Animal Science;

(J) Advanced Plant and Soil Science;

(K) Anatomy and Physiology;

(L) Medical Microbiology;

(M) Pathophysiology;

- (N) Food Science;
- (O) Forensic Science;
- (P) Biotechnology I;
- (Q) Biotechnology II;
- (R) Principles of Technology;
- (S) Scientific Research and Design;
- (T) Engineering Design and Problem Solving;
- (U) Engineering Science;

(V) pursuant to the TEC, §28.025(b-5), after the successful completion of physics, a science course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The TEA shall maintain a current list of courses offered under this subparagraph;

(W) a locally developed science course or other activity, including an apprenticeship or training hours needed to obtain an industry-recognized credential or certificate that is developed pursuant to the TEC, §28.002(g-1);

(X) pursuant to the TEC, §28.025(c-3), a student pursuing an arts and humanities endorsement who has the written permission of the student's parent or a person standing in parental relation to the student may substitute a course that is not being used to satisfy another specific graduation requirement selected from:

- (i) Chapter 110 of this title (relating to Texas Essential Knowledge and Skills for English Language Arts and Reading);
- (ii) Chapter 113 of this title (relating to Texas Essential Knowledge and Skills for Social Studies);
- (iii) Chapter 114 of this title (relating to Texas Essential Knowledge and Skills for Languages Other Than English); or
- (iv) Chapter 117 of this title (relating to Texas Essential Knowledge and Skills for Fine Arts); and

(Y) credit may not be earned for both physics and Principles of Technology to satisfy science credit requirements.

(Z) The fourth science credit may be satisfied with one credit of a two-credit IB science course selected from Chapter 112 of this title (relating to Texas Essential Knowledge and Skills for Science) that does not count toward another credit required for graduation.

(7) Two additional elective credits that may be selected from the list of courses specified in §74.11(g) or (h) of this title (relating to High School Graduation Requirements).

(f) A student may earn any of the following endorsements.

(1) Science, technology, engineering, and mathematics (STEM). Students who entered high school prior to the 2022-2023 school year may earn a STEM endorsement by completing the requirements specified in subsection (e) of this section, including Algebra II, chemistry, and physics or Principles of Technology and:

(A) a coherent sequence of courses for four or more credits in career and technical education (CTE) that consists of at least two courses in the same career cluster and at least one advanced CTE course. The courses may be selected from Chapter 130 of this title (relating to Texas Essential Knowledge and Skills for Career and Technical Education), Chapter 127 of this title (relating to Texas Essential Knowledge and Skills for Career Development and Career and Technical Education), or CTE innovative courses. The final course in the

sequence must be selected from Chapter 127, Subchapter O, of this title (relating to Science, Technology, Engineering, and Mathematics) or Career Preparation I or II (Career Preparation General or Career Preparation for Programs of Study) and Project-Based Research (Career and Technical Education Project-Based Capstone) in Chapter 127, Subchapter B, of this title (relating to High School), if the course addresses a STEM-related field;

(B) courses required to complete a TEA-designated program of study related to STEM;

(C) three credits in mathematics by successfully completing Algebra II and two additional mathematics courses for which Algebra II is a prerequisite by selecting courses from subsection (e)(2) of this section;

(D) four credits in science by successfully completing chemistry, physics, and two additional science courses by selecting courses from subsection (e)(6) of this section; or

(E) in addition to Algebra II, chemistry, and physics, a coherent sequence of three additional credits from no more than two of the categories or disciplines represented by subparagraphs (A), (B), (C), and (D) of this paragraph.

(2) Business and industry. Students who entered high school prior to the 2022-2023 school year may earn a business and industry endorsement by completing the requirements specified in subsection (e) of this section and:

(A) a coherent sequence of courses for four or more credits in CTE that consists of at least two courses in the same career cluster and at least one advanced CTE course. The courses may be selected from Chapter 130 of this title, Chapter 127 of this title, or CTE innovative courses. The final course in the sequence must be selected from one of the following:

- (i) Chapter 127, Subchapter C, of this title (relating to Agriculture, Food, and Natural Resources);
- (ii) Chapter 130, Subchapter A, of this title (relating to Agriculture, Food, and Natural Resources);
- (iii) Chapter 130, Subchapter B, of this title (relating to Architecture and Construction);
- (iv) Chapter 130, Subchapter C, of this title (relating to Arts, Audio/Video Technology, and Communications);
- (v) Chapter 127, Subchapter F, of this title (relating to Business, Marketing, and Finance);
- (vi) Chapter 130, Subchapter D, of this title (relating to Business Management and Administration);
- (vii) Chapter 130, Subchapter F, of this title (relating to Finance);
- (viii) Chapter 127, Subchapter J, of this title (relating to Hospitality and Tourism);
- (ix) Chapter 130, Subchapter K, of this title (relating to Information Technology);
- (x) Chapter 130, Subchapter M, of this title (relating to Manufacturing);
- (xi) Chapter 130, Subchapter N, of this title (relating to Marketing);
- (xii) Chapter 127, Subchapter P, of this title (relating to Transportation, Distribution, and Logistics);

(xiii) Chapter 130, Subchapter P, of this title (relating to Transportation, Distribution, and Logistics);

(xiv) Chapter 130, Subchapter Q, of this title (relating to Energy); or

(xv) Career Preparation I or II (Career Preparation General or Career Preparation for Programs of Study) and Project-Based Research (Career and Technical Education Project-Based Capstone) in Chapter 127, Subchapter B, of this title if the course addresses a career from a field listed in clauses (i)-(xiv) of this subparagraph;

(B) courses required to complete a TEA-designated program of study related to business and industry;

(C) four English credits by selecting courses from Chapter 110 of this title to include three levels in one of the following areas:

(i) public speaking;

(ii) debate;

(iii) advanced broadcast journalism;

(iv) advanced journalism: newspaper;

(v) advanced journalism: yearbook; or

(vi) advanced journalism: literary magazine; or

(D) a coherent sequence of four credits from subparagraph (A), (B), or (C) of this paragraph.

(3) Public services. Students who entered high school prior to the 2022-2023 school year may earn a public services endorsement by completing the requirements specified in subsection (e) of this section and:

(A) a coherent sequence of courses for four or more credits in CTE that consists of at least two courses in the same career cluster and at least one advanced CTE course. The courses may be selected from Chapter 130 of this title, Chapter 127 of this title, or CTE innovative courses. The final course in the sequence must be selected from one of the following:

(i) Chapter 127, Subchapter G, of this title (relating to Education and Training);

(ii) Chapter 127, Subchapter I, of this title (relating to Health Science);

(iii) Chapter 130, Subchapter J, of this title (relating to Human Services);

(iv) Chapter 127, Subchapter M, of this title (relating to Law and Public Service); or

(v) Career Preparation I or II (Career Preparation General or Career Preparation for Programs of Study) and Project-Based Research (Career and Technical Education Project-Based Capstone) in Chapter 127, Subchapter B, of this title if the course addresses a field from a cluster listed in clauses (i)-(v) of this subparagraph;

(B) courses required to complete a TEA-designated program of study related to public services; or

(C) four courses in Junior Reserve Officer Training Corps (JROTC).

(4) Arts and humanities. A student may earn an arts and humanities endorsement by completing the requirements specified in subsection (e) of this section and:

(A) five social studies credits by selecting courses from Chapter 113 of this title; or

(B) four levels of the same language in a language other than English by selecting courses in accordance with Chapter 114 of this title, which may include Advanced Language for Career Applications; or

(C) two levels of the same language in a language other than English and two levels of a different language in a language other than English by selecting courses in accordance with Chapter 114 of this title; or

(D) four levels of American sign language by selecting courses in accordance with Chapter 114 of this title; or

(E) a coherent sequence of four credits by selecting courses from one or two categories or disciplines in fine arts from Chapter 117 of this title or innovative courses approved by the commissioner; or

(F) four English credits by selecting from the following:

(i) English IV; or

(ii) Independent Study in English; or

(iii) Literary Genres; or

(iv) Creative Writing; or

(v) Research and Technical Writing; or

(vi) Humanities; or

(vii) Communication Applications; or

(viii) AP English Literature and Composition; or

(ix) AP English Language and Composition; or

(x) IB Language Studies A: Language and Literature Standard Level; or

(xi) IB Language Studies A: Language and Literature Higher Level; or

(xii) IB Language Studies A: Literature Standard Level; or

(xiii) IB Language Studies A: Literature Higher Level; or

(xiv) IB Literature and Performance Standard Level.

(5) Multidisciplinary studies. A student may earn a multidisciplinary studies endorsement by completing the requirements specified in subsection (e) of this section and:

(A) four advanced courses that prepare a student to enter the workforce successfully or postsecondary education without remediation from within one endorsement area or among endorsement areas that are not in a coherent sequence; or

(B) four credits in each of the four foundation subject areas to include chemistry and/or physics and English IV or a comparable AP or IB English course; or

(C) four credits in Advanced Placement, International Baccalaureate, or dual credit selected from English, mathematics, science, social studies, economics, languages other than English, or fine arts.

(6) STEM. Students who entered high school in the 2022-2023 school year or later may earn a STEM endorsement by completing

the requirements specified in subsection (e) of this section, including Algebra II, chemistry, and physics or Principles of Technology and:

(A) courses required to be designated a CTE completer in one of the following TEA-approved programs of study related to STEM:

- (i) biomedical sciences;
- (ii) civil engineering;
- (iii) cybersecurity;
- (iv) electrical engineering;
- (v) engineering foundations;
- (vi) geospatial engineering and land surveying;
- (vii) mechanical and aerospace engineering;
- (viii) networking systems;
- (ix) nursing science;
- (x) programming and software development;
- (xi) renewable energy;
- (xii) robotics and automation technology; or
- (xiii) web development;

(B) three credits in mathematics by successfully completing Algebra II and two additional mathematics courses for which Algebra II is a prerequisite by selecting courses from subsection (e)(2) of this section;

(C) four credits in science by successfully completing chemistry, physics, and two additional science courses by selecting courses from subsection (e)(6) of this section; or

(D) in addition to chemistry, physics, and Algebra II, one additional mathematics course listed in subsection (e)(2) of this section for which Algebra II is a prerequisite and one additional science course listed in subsection (e)(6) of this section.

(7) Business and industry. Students who entered high school in the 2022-2023 school year or later may earn a business and industry endorsement by completing the requirements specified in subsection (e) of this section and:

(A) courses required to be designated a CTE completer in one of the following TEA-approved programs of study related to business and industry:

- (i) accounting and financial services;
- (ii) agriculture business, leadership, and communications;
- (iii) agricultural technology and mechanical systems;
- (iv) animal science;
- (v) architectural drafting and design;
- (vi) automotive and collision repair;
- (vii) aviation maintenance;
- (viii) aviation pilots;
- (ix) business management;
- (x) carpentry;
- (xi) construction management and inspection;

(xii) cosmetology;

(xiii) culinary arts;

(xiv) diesel and heavy equipment maintenance and commercial drivers;

- (xv) digital communications;
- (xvi) distribution, logistics, and warehousing;
- (xvii) drone (unmanned vehicle);
- (xviii) electrical;
- (xix) entrepreneurship;
- (xx) environmental and natural resources;
- (xxi) food science and technology;
- (xxii) graphic design and interactive media;
- (xxiii) HVAC and sheet metal;
- (xxiv) industrial maintenance;
- (xxv) information technology support and services;
- (xxvi) lodging and resort management;
- (xxvii) manufacturing technology;
- (xxviii) maritime;
- (xxix) marketing and sales;
- (xxx) masonry;
- (xxxi) oil and gas exploration and production;
- (xxxii) plant science;
- (xxxiii) plumbing and pipefitting;
- (xxxiv) printing and imaging;
- (xxxv) real estate;
- (xxxvi) refining and chemical processes;
- (xxxvii) retail management;
- (xxxviii) travel, tourism, and attractions; or
- (xxxix) welding;

(B) courses required to be designated a CTE completer in one of the following TEA-approved programs of study related to business and industry, if the mathematics and science requirements for the STEM endorsement are not met:

- (i) civil engineering;
- (ii) cybersecurity;
- (iii) electrical engineering;
- (iv) engineering foundations;
- (v) geospatial engineering and land surveying;
- (vi) mechanical and aerospace engineering;
- (vii) networking systems;
- (viii) programming and software development;
- (ix) renewable energy;
- (x) robotics and automation technology; or
- (xi) web development; or

(C) four English credits by selecting courses from Chapter 110 of this title to include three levels in one of the following areas:

- (i) public speaking;
- (ii) debate;
- (iii) advanced broadcast journalism;
- (iv) advanced journalism: newspaper;
- (v) advanced journalism: yearbook; or
- (vi) advanced journalism: literary magazine.

(8) Public services. Students who entered high school in the 2022-2023 school year or later may earn a public services endorsement by completing the requirements specified in subsection (e) of this section and:

(A) courses required to be designated a CTE completer in one of the following TEA-approved programs of study related to public services:

- (i) biomedical science, if the mathematics and science requirements for the STEM are not met;
- (ii) diagnostic and therapeutic services;
- (iii) early learning;
- (iv) exercise science, wellness, and restoration;
- (v) family and community services;
- (vi) fire science;
- (vii) government and public administration;
- (viii) health and wellness;
- (ix) health informatics;
- (x) law enforcement;
- (xi) legal studies;
- (xii) nursing science, if the mathematics and science requirements for the STEM are not met; or
- (xiii) teaching and training; or

(B) four courses in Junior Reserve Officer Training Corps (JROTC).

(g) A course completed as part of the set of four courses needed to satisfy an endorsement requirement may also satisfy a requirement under §74.12(b) and (c) of this title and subsection (e)(2), (4), (5), and (6) of this section, including an elective requirement. The same course may count as part of the set of four courses for more than one endorsement.

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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For further information, please call: (512) 475-1497

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

The Texas Education Agency (TEA) adopts amendments to §§89.1011, 89.1040, 89.1050, 89.1055, and 89.1131, concerning clarification of special education provisions in federal regulations and state law and special education and related service personnel. The amendments are adopted with changes to the proposed text as published in the March 22, 2024 issue of the *Texas Register* (49 TexReg 1820) and will be republished. The adopted amendments implement House Bill (HB) 3928, 88th Texas Legislature, Regular Session, 2023, and codify current program practices. Changes were made to the rules since published as proposed.

REASONED JUSTIFICATION: Section 89.1011 defines the criteria for school districts conducting full individual and initial evaluations (FIEs) to determine eligibility for special education and related services.

Changes adopted throughout §89.1011 clarify the evaluation process and address HB 3928, 88th Texas Legislature, Regular Session, 2023.

The adopted amendment to §89.1011(a) clarifies terms and establishes one new expectation. The adopted amendment includes using the term "multi-tiered system of academic and behavioral supports" in place of an overall referral or screening system and aligns terms and text style within the subsection.

Based on public comment, subsection (a) has been changed at adoption to strengthen clarification that school districts cannot require participation in intervention for a certain period of time and retain the language "experience difficulty in the general education classroom." Also based on public comment, a requirement to refer a student at any time for an FIE if district personnel suspect a disability and possible need for special education and related services was added. A new requirement has been added that a student must continue to receive any necessary interventions and support services while an FIE is being conducted, which has been standard practice.

The Texas Education Code (TEC) requires a school district to respond in a certain way when a parent submits a written request to the district's director of special education services or to a district administrative employee. Section 89.1011(b) has been modified to add campus principals as examples of district administrative employees. The Overview of Special Education for Parents form was created by TEA to comply with HB 3928. While the form is only required by law for suspicions of dyslexia, the adopted amendment to §89.1011(b)(1) and (2) adds this requirement for suspicions of any disability.

New §89.1011(c) establishes what is required when a school district initiates the referral for an FIE of a student.

Information from §89.1011(d) has been removed, as new subsection (g) addresses the same topic.

TEC, §29.004, outlines the timeline for the completion of FIEs. Section 89.1011(e) has been amended to more clearly describe the requirements of state law when parental consent is received less than 45 school days before the last instructional day of the school year.

New §89.1011(g) establishes timelines for the admission, review, and dismissal (ARD) committee to make decisions

regarding a student's eligibility determination and, if appropriate, an individualized education program (IEP) and placement within 30 calendar days of the completed FIIE report. The adopted amendment also specifies that if the 30th day falls in the summer when school is not in session, the ARD committee must meet no later than the 15th day of school the next school year. If extended school year services are indicated as a need in a report, however, the ARD committee will need to meet as soon as possible after completion of the report.

Based on public comment, new §89.1011(h) has been changed at adoption. As proposed, the subsection established that a copy of the written FIIE report must be provided to the parent no later than when the initial ARD committee invitation is sent to the parent, or no later than June 30 if subsection (e)(1) of the section applies. The modified language requires a copy of the written FIIE report be provided to the parent as soon as possible after completion of the report but no later than five school days prior to the initial ARD committee meeting, or no later than June 30 if subsection (e)(1) of the section applies.

Section 89.1011(i) establishes the meaning of a school day for year-round schools, as authorized under TEC, §29.004.

The adopted amendment to §89.1011(j) clarifies that student absences are those categorized as absences under the *Student Attendance Accounting Handbook*.

Section 89.1040 establishes eligibility criteria.

Changes are adopted throughout §89.1040 for clarification and to align more closely with law.

Section 89.1040(c)(1), regarding autism eligibility, has been amended to remove references to pervasive developmental disorder, as this diagnosis is no longer used, and update the areas of recommendations that an evaluation report contains.

Based on public comment, §89.1040(c)(1) has been changed at adoption to add that a determination of whether a student meets the criteria for autism cannot require the student to meet requirements for a medical/psychological diagnosis of autism and that the absence of other characteristics often associated with autism, as listed in 34 Code of Federal Regulations (CFR), §300.8(c)(1), does not exclude a student from meeting eligibility. Also based on public comment, the term "positive" has been added at adoption to modify behavioral interventions and strategies.

Based on the receipt of a petition to adopt a rule change, §89.1040(c)(3)(A) has been amended to remove the eligibility requirement for deaf or hard of hearing to include an ontological examination performed by an otolaryngologist. In addition, the subsection amended to include the completion of a communication assessment to align with current practice. Based on public comment, the term amplification was changed at adoption to "hearing assistive technology."

In 26 Texas Administrative Code (TAC) §350.809, regarding eligibility for early childhood intervention (ECI) services, the rule states that a child is eligible for ECI if he or she meets the criteria for deaf or hard of hearing as defined in §89.1040. Because §89.1040(c)(3) reflects the definition used in the Individuals with Disabilities Education Act (IDEA), Part B, for children age three and older, rather than Part C for those under the age of three, and because children under the age of three who are deaf or hard of hearing or who have a visual impairment are eligible for state special education funding, §89.1040(c)(3)(B) has been amended to reference when a child under the age of three can

be determined eligible by a local educational agency (LEA) for the deaf or hard of hearing eligibility category. Based on public comment, §89.1040(c)(3)(B) has been changed at adoption to more closely align with IDEA, Part C, eligibility criteria of infant or toddler with disability.

Based on requests from various stakeholders, the name of the emotional disturbance disability category was proposed to change to emotional/behavioral disability. Based on public comment, the name has been changed at adoption to emotional disability and changes to the name have been made throughout.

Adopted language also specifies that emotional disability is considered synonymous with the term emotional disturbance and serious emotional disturbance, as those terms are used in federal and state law.

Section 89.1040(c)(6), regarding multiple disabilities, has been amended to align with the definition more closely in federal law.

In the eligibility categories of orthopedic impairment in §89.1040(c)(7), other health impairment in §89.1040(c)(8), and traumatic brain injury in §89.1040(c)(11), the proposed amendment referenced the requirement for certain medical professionals to provide information, rather than be an official part of the multidisciplinary team. Based on public comment, the sentences have been restructured at adoption and, for orthopedic impairment and traumatic brain injury, the eligibilities must include a medical diagnosis provided by a licensed physician. A student's eligibility for other health impairment must include identification or confirmation of the student's chronic or acute health problem provided by the listed medical professionals.

Section 89.1040(c)(9), regarding eligibility as a student with a specific learning disability, is amended based on both HB 3928 and for clarification. The changes include the following. Repeated performance on progress monitoring measures have been added as another example of a measure that can be reviewed to determine if a student is achieving adequately. Language has been added that written expression may include the identification of dysgraphia, and basic reading skill and reading fluency skills may include the identification of dyslexia. Clarification has been added that a significant variance among specific areas of cognitive function or between specific areas of cognitive function and academic achievement is not a requirement for determining the presence of a specific learning disability. New subparagraph (G) has been added to address specific requirements related to suspicions and identification of dyslexia or dysgraphia. Based on public comment, changes have been made at adoption to include current terminology referencing a general education teacher rather than regular teacher and reword §89.1040(c)(9)(G)(i) to "when the specific learning disability of dyslexia is suspected."

Based on public comment, proposed revisions to add the statutory requirement of the expanded core curriculum in §89.1040(c)(12), regarding visual impairment, are removed at adoption. TEA has determined that more technical assistance needs to be provided on this topic before adding it to rule.

Section 89.1040(c)(12) has been revised to remove redundant information about orientation and mobility specialists, as these specialists must be certified and part of the team as required by statute and it is unnecessary to repeat this requirement in administrative rule. In 26 TAC §350.809, regarding eligibility for ECI services, the rule states that a child is eligible for ECI if he or she meets the criteria for a visual impairment as defined in §89.1040. Because §89.1040(c)(12)(A) reflects the definition used in IDEA,

Part B, for children age three and older, rather than Part C for those under the age of three, and because children under the age of three who are deaf or hard of hearing or who have a visual impairment are eligible for state special education funding, §89.1040(c)(12)(C) has been amended to reference when a child under the age of three can be determined eligible by an LEA for the visual impairment eligibility category. Based on public comment, §89.1040(c)(12)(C) has been changed at adoption to be applicable to a child under three to more closely mirror the IDEA, Part C, definition of infant or toddler with a disability.

IDEA and its corresponding federal regulations allow states to use the disability category of developmental delay. If states choose to use this category, they may not require LEAs to use it. However, if an LEA uses this category, the LEA must comply with the eligibility requirements set by the state. Texas has historically not used the eligibility category of developmental delay but has used a category called "noncategorical," also known as "noncategorical early childhood." This is defined as a child between the ages of three and five who is evaluated as having an intellectual disability, an emotional disturbance, a specific learning disability, or autism. The adopted amendment adds new §89.1040(c)(13) to officially establish the state's definition of developmental delay and prescribe how LEAs will use this eligibility category should they choose to do so. A transition period is included with the amendment to phase out the category of noncategorical. Based on public comment, the age ranges have been changed at adoption from 3-5 to 3-9.

Section 89.1050 describes roles and duties of the ARD committee.

Section 89.1050(a) is amended to add TEC, §37.004 and §37.307, to reflect duties for which the ARD committee is responsible.

An adopted amendment to §89.1050(c), regarding committee membership, includes the addition of a cross reference to federal regulations for the definition of parent and clarifications regarding current terminology.

Based on public comment, a new subparagraph (D) has been added to §89.1050(c)(3) at adoption to include criteria for an ARD committee determining initial or continuing eligibility of a student who is suspected or identified with dyslexia.

Section 89.1050(g), (i), and (j) have been removed and included, with changes, in §89.1055, where those provisions are more appropriately addressed.

Section 89.1050(k) has been removed, as the subsection restates law and is unnecessary to repeat in administrative rule.

Section 89.1055 addresses the content of the IEP. To better align with the provisions included in this rule, the title has been changed to Individualized Education Program.

Section 89.1055(a) has been amended to include a reference to TEC, §29.0051, to clarify that an IEP must also contain any state-imposed requirements in addition to the federal requirements that are already listed.

To align with how TEA monitors IEP compliance, new §89.1055(b) addresses how TEA will determine if a measurable annual goal is present in an IEP. The new subsection also includes information regarding when short-term objectives/benchmarks are required and how those relate to annual goals.

New §89.1055(d) requires the inclusion of TEA's alternate assessment participation form in a student's IEP to comply with the required statements when an ARD committee has determined that a student will not participate in the general statewide assessment. Based on public comment §89.1055(c) and (d) were reorganized at adoption so that the alternate participation form is more closely aligned with the alternate eligibility statement.

Amendments to §89.1055(g) clarify expectations and terminology within the autism supplement. Based on public comment, the phrase "at least annually" was added to §89.1055(g) at adoption and the phrase "is implemented and reviewed in accordance with subsection (j)" was added to subsection (g)(4)(B). Additionally, the phrases "learning and training" and "including self-determination and self-advocacy skills" was added at adoption to subsection (g)(5).

Based on public comment, new §89.1055(i) has been added at adoption to require that IEP's for students identified with the specific learning disability of dyslexia or a related disorder be developed and implemented in accordance with the requirements under 19 TAC §74.28, Students with Dyslexia and Related Disorders, including any handbook adopted in the rule.

Based on requests from stakeholders to clarify the expectations related to the state transition requirements found in TEC, §29.011 and §29.0111, that begin at 14 years of age and the federal requirements for transition that begin no later than 16 years of age, TEA has aligned all transition requirements with 14 years of age as authorized in TEC, §29.011 and §29.0111. The following changes to §89.1055 address the alignment. References have been removed from subsection (k) to reflect a student being at least 18 years of age and added to another subsection so that subsection (k) is focused on the requirements that happen not later than the first IEP to take effect when the student turns 14 years of age. Employment and independent living goals and objectives have been removed from subsection (k). Although these are listed as state transition requirements, they are already adequately addressed in the federal requirements. New subsection (l) address the federal transition requirements and align those requirements to begin no later than the first IEP to be in effect when the student turns 14 years of age. Subsections (k) and (l) are separated because state requirements in TEC, §29.011, require these areas to be "considered and addressed, if appropriate," and the federal requirements described in subsection (l) require them to be included in a student's IEP. New subsection (m) clarifies that state requirements for employment and independent living goals and objectives will be addressed within the goals required under subsection (l). Subsection (n) has been modified to include the required provisions that apply once a student is 18. New subsection (o) has been added to address the requirement for the ARD committee to review certain issues at least annually. The language is similar to an existing requirement and is being moved from a subsection proposed for deletion to allow this requirement to be organized with transition requirements.

New §89.1055(p), addresses the requirements for all members of the ARD committee to participate in a collaborative manner, adds language from §89.1050 with no changes to rule text.

New §89.1055(r), which addresses the requirements for translations of student IEPs, adds language from §89.1050 with no changes to rule text.

New §89.1055(s) adds modified language from §89.1050. Clarifications have been made related to students who transfer to

a new school district from an in-state or out-of-state district. In addition, based on recent federal guidance on serving students who are highly mobile, additional text regarding extended school year services being considered a comparable service has been added. Within this same guidance, students who registered in new districts over the summer months are viewed the same as students who transferred during the school year. To reflect that guidance, changes clarify that school districts will follow the same processes for students who register in the summer as those who transfer during the school year, depending on whether the student is coming from an in-state or out-of-state district.

Section 89.1131 establishes qualifications of special education, related service, and paraprofessional personnel.

New §89.1131(b) establishes that a provider of dyslexia instruction is not required to be certified in special education unless employed in a special education position requiring certification.

Language related to the special education endorsement for early childhood education for students with disabilities has been removed as the endorsement is no longer issued.

Section 89.1131(c)(4) clarifies the provisions for physical education when an ARD committee has determined that a student needs specially designed instruction in physical education.

Language related to secondary certification with the generic delivery system has been removed as the certification is no longer issued.

Based on public comment, the phrase "working as educational aides" was added to §89.1131(d) at adoption to clarify the terms paraprofessional personnel and educational aides.

Section 89.1131(e) has been modified to delete references to the Department of Assistive and Rehabilitative Services (DARS) or Office for Deaf and Hard of Hearing Services (DHHS), as this department and office have been consolidated into the Health and Human Services Commission.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began March 22, 2024, and ended April 22, 2024, and included public hearings on April 8 and 10, 2024. Following is a summary of the public comments received and agency responses.

§89.1011, Full Individual and Initial Evaluation

Comment: Disability Rights Texas (DRTx) and Texans for Special Education Reform (TxSER) commented that subsection (a) should retain the text regarding a general education referral and screening system.

Response: The agency disagrees. The text replacing this phrase is a more accurate and comprehensive description of the supports that need to be in place for all students, which would include referrals and screenings where necessary and appropriate.

Comment: DRTx and TxSER commented that the text referencing continued difficulty in the general classroom should be retained.

Response: The agency agrees that the proposed replacement text regarding not making expected progress may be misinterpreted. At adoption, the proposed text has been replaced with similar language that was previously in place referring to a student who continues to "experience difficulty in the general education classroom."

Comment: TxSER commented that the terminology around not requiring a student to participate in interventions and supports for a certain period of time should be written more affirmatively.

Response: The agency agrees and has changed the text in subsection (a) at adoption to reference that the school district cannot require a student to participate in interventions and support services for any specific length of time prior to a referral being made or an FIIE conducted.

Comment: TxSER commented that the end of subsection (a) referring to the continuation of interventions and support services while an FIIE is being conducted be changed to "academic or educational needs" rather than "academic or behavioral needs."

Response: The agency disagrees since academic and behavioral supports are referred to earlier in the subsection.

Comment: The Arc of Texas supports the clarification that students must continue to receive any necessary interventions and support services to target their academic or behavioral needs while an FIIE is being conducted.

Response: The agency agrees.

Comment: An individual commented that subsection (a) should contain a reference to the two prongs of special education when a referral is being considered, which are the suspicion of a disability and the need for special education and related services.

Response: The agency agrees but stresses that these prongs of referral consideration and eligibility apply regardless of them being included in the rule. However, for clarity, at adoption, subsection (a) has been modified to reflect that a referral is required at any time district personnel suspect a disability and a possible need for special education and related services.

Comment: The Texas Council of Administrators of Special Education (TCASE) commented that it was unclear whether the mention of "multi-tiered system of academic and behavioral supports" is different from the general term multi-tiered system of supports and suggested keeping terminology that districts are used to.

Response: The agency disagrees and provides the following clarification. The terms are the same, but the agency has determined that it is important to clarify in rule that this system of support includes both academic and behavioral difficulties.

Comment: TxSER and one individual commented in support of adding an example of district personnel to whom a request for evaluation can be submitted in subsection (b).

Response: The agency agrees.

Comment: The Arc of Texas commented in support of the "Overview of Special Education for Parents" form being given to parents once a request or referral is made for a special education evaluation.

Response: The agency agrees.

Comment: Seven individuals and TCASE commented in support of the change to allow up to 15 school days to hold an initial ARD committee meeting when the 30th calendar day falls in the summer.

Response: The agency agrees.

Comment: TxSER, DRTx, and Autism Speaks disagreed with the change to allow for 15 school days to hold an initial admission, review, and dismissal (ARD) committee meeting if a referral for special education was made between 35 and 45 days

of school remaining in the school year but the student incurred three or more absences during this time. The commenters recommended keeping the requirement to have the ARD meeting by the beginning of the year.

Response: The agency disagrees. While the agency believes that the initial ARD committee meeting should be held as soon as possible, the agency disagrees with keeping the requirement to hold the ARD committee meeting by the beginning of the school year, noting that local education agencies (LEAs) have a five-school-day notice requirement, which cannot be accomplished with a requirement to hold a meeting by the beginning of the school year without a parent waiving that required notice.

Comment: TxSER supported the requirement to give a copy of the evaluation report to parents earlier than the ARD committee.

Response: The agency disagrees, as, based on other public comments, the agency has revised the text to change this requirement at adoption.

Comment: The Texas Association of School Psychologists (TASP), TCASE, and 108 individuals commented that the proposed amendment to require a copy of the evaluation report be given to parents no later than when the initial ARD committee meeting invitation is sent would be difficult to implement, with the primary reason being that those notices/invitations go out well in advance of an evaluation report being completed.

Response: The agency agrees and has revised subsection (h) at adoption to require that a copy of the evaluation report be given to parents as soon as possible after completion but no later than five school days prior to the initial ARD committee meeting.

Comment: One individual requested that the agency mandate verbal explanations of the evaluation report to parents.

Response: The agency disagrees. While the agency agrees that an explanation by the evaluator to parents is extremely important, the agency disagrees that this is necessary to add to the rule.

Comment: Three individuals commented in support of providing a parent a copy of the written FIIE no later than when the initial ARD committee invitation is sent or no later than June 30, if applicable.

Response: The agency provides the following clarification. Based on other public comment, §89.1011(h) was modified at adoption to specify that a copy of the written FIIE report must be provided to the parent as soon as possible after completion of the report but no later than five school days prior to the initial ARD committee meeting, or not later than June 30.

Comment: One individual commented that evaluations due on June 30 should not be required to be given to parents until after that date.

Response: The agency disagrees. State law requires that both the evaluation and a copy of the report be given to parents by June 30 in these circumstances.

Comment: An administrator asked for clarification about how to determine absences in relation to subsection (j).

Response: The comment is outside the scope of the proposed rulemaking, but the agency will determine what technical assistance is required once the rules are in effect.

Comment: The Arc of Texas recommended that a referral to the local intellectual and developmental disability authority be made when an FIIE finding of intellectual disability is written.

Response: The agency disagrees, as this change would require additional time for public comment. Text at this time regarding this type of referral.

§89.1040, Eligibility Criteria

Comment: TASP and 62 individuals commented in support of incorporating the term "school psychologist" where licensed specialist in school psychology is mentioned.

Response: The agency agrees.

Comment: Twenty-two individuals commented in support of removing references to pervasive developmental disorder regarding autism eligibility.

Response: The agency agrees.

Comment: One individual commented, regarding autism eligibility, that the rule should clarify that the medical diagnosis of autism is different than the educational identification of autism and that the characteristics listed in the federal regulations of what often displays in individuals with autism should be clarified in the rule as not being a required list or an exhaustive list.

Response: The agency agrees that clarification may be beneficial to the rule. At adoption, subsection (c)(1) has been revised to state that a determination of whether a student meets the criteria for autism cannot require that a student meets the medical/psychological diagnosis of autism, nor can the absence of the characteristics listed in the federal regulations as often occurring in individuals with autism exclude a student from meeting eligibility for autism.

Comment: Two individuals and TxSER commented in support of adding communication and social interaction to the autism evaluation report.

Response: The agency agrees.

Comment: DRTx, TxSER, the Arc of Texas, Autism Speaks, and the Autism Society of Texas requested to add "positive" to behavioral interventions and supports regarding autism eligibility and the evaluation report, as well as considerations of the eleven elements of the state's autism supplement as appropriate.

Response: The agency agrees in part and disagrees in part. The agency agrees to add the word "positive" to behavioral interventions and strategies and has modified §89.1040(c)(1) accordingly at adoption. However, the agency disagrees with adding reference to all strategies in the autism supplement, as all of the strategies may not be relevant for an initial evaluation report.

Comment: A lead school psychologist requested clarification on whether the required written report of evaluation for autism applies to students who did not qualify.

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

Comment: Autism Speaks requested to add a reference to the Autism Supplement by name.

Response: The agency disagrees with adding specific reference to the autism supplement, as the term of art is not as important as the required strategies being included in the IEP.

Comment: TxSER and Autism Speaks commented that expanded core curriculum should be added for deaf-blindness.

Response: The agency disagrees. Based on public comment, reference to the expanded core curriculum has been removed at adoption from subsection (c)(12)(A)(iv), relating to visual impairment, so it will not be added to deaf-blindness.

Comment: Thirty-two individuals commented in support of removing the requirement for an ontological examination for deaf and hard of hearing eligibility.

Response: The agency agrees.

Comment: Three individuals commented to protest removal of the requirement for an ontological examination for deaf and hard of hearing eligibility.

Response: The agency disagrees, as this should not be an absolute requirement for determining eligibility.

Comment: TxSER and Autism Speaks commented that language should be added regarding eligibility for deaf and hard of hearing to clarify that a documented hearing loss is not required if a student is unable to participate in formal audiological testing or the student has a suspected neurological or functional loss of hearing.

Response: The agency disagrees that this is necessary for the determination of eligibility for deaf and hard of hearing, but will consider it for future amendments.

Comment: One individual commented that the term "amplification" in subsection (c)(3) is confusing.

Response: The agency agrees that a different word may be more appropriate and has changed the term at adoption to "hearing assistive technology."

Comment: One individual suggested an alternative definition for deaf or hard of hearing and eligibility criteria.

Response: The agency disagrees. Other eligibility categories, such as other health impairment, may be considered if the deaf or hard of hearing eligibility criteria does not apply.

Comment: Five individuals, Texas Health and Human Services, TxSER, and Autism Speaks, commented asking for clarification on eligibility for an infant or toddler to meet eligibility as deaf or hard of hearing.

Response: The agency agrees that additional clarification is needed and has revised subsection (c)(3)(B) the eligibility at adoption to more closely mirror the federal regulations for an infant or toddler with a disability.

Comment: One individual commented in support of the communication assessment being required for deaf or hard of hearing eligibility.

Response: The agency agrees.

Comment: Approximately 70 individuals and Parent to Parent, TxSER, DRTx, and TCASE commented either in full support, or in support with additional recommendations, of the name change from emotional disturbance to emotional/behavioral disability. From those comments, at least 65 individuals and TCASE commented in support of the name change from emotional disturbance to emotional/behavioral disability, one commenter stated that there should not be punctuation between emotional and behavioral, one commenter requested that the term be changed to mental health disability, one commenter requested that the term be changed to emotional dysregulation disability/disorder, and other commenters recommended removing the term "behavioral" based on perceived stigma.

Response: The agency agrees that removal of the term "disturbance" is appropriate. At adoption, the agency has deleted "behavioral," so the term will be emotional disability. Changes have been made throughout the rule where this eligibility category is named.

Comment: DRTx, TxSER, and the Arc of Texas suggested that the evaluation report for emotional disability include recommendations for mental health supports and social interaction.

Response: The agency disagrees and provides the following clarification. Positive behavioral supports and interventions could include both of these types of recommendations.

Comment: Two individuals expressed interest in revising eligibility for intellectual disability.

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

Comment: Three individuals and Alliance of and for Visually Impaired Texans commented in support of the clarification that multiple disabilities does not include deaf-blindness.

Response: The agency agrees.

Comment: Twenty-nine individuals commented generally questioning the information that would be required by a qualified medical professional for the eligibility categories of orthopedic impairment, other health impairment, and traumatic brain injury. The commenters generally supported the idea that the medical professionals were not official members of the multi-disciplinary team but need to provide certain information.

Response: The agency agrees that further clarification is needed. At adoption, §89.1040(c)(7) has been modified to require a medical diagnosis for the eligibility of orthopedic impairment; subsection (c)(8) has been modified to require identification or confirmation of the student's health problem for the eligibility of other health impairment; and subsection (c)(11) has been modified to require a medical diagnosis for the eligibility category of traumatic brain injury.

Comment: DRTx commented that autism should be added to the list of impairments not considered a specific learning disability in subsection (c)(9)(A).

Response: The agency disagrees with adding autism to this list at this time, as the current list is taken from federal regulations.

Comment: Twenty-two individuals commented in support of specific learning disability (SLD) in subsection (c)(9) being amended to include identifications of dyslexia or dysgraphia.

Response: The agency agrees.

Comment: One individual requested that dyslexia and dysgraphia be listed individually under areas of SLD.

Response: The agency disagrees as dyslexia is an SLD in basic reading and/or fluency while dysgraphia is an SLD in written expression.

Comment: TCASE questioned whether dyscalculia should be added to the area of math calculation in subsection (c)(9).

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

Comment: Three individuals commented regarding subsection (c)(9)(C), stating that it was incorrect or unnecessary to specify that the presence of a significant variance among specific areas of cognitive function or between specific areas of cognitive func-

tion and academic achievement is not required for determining an SLD.

Response: The agency disagrees. In 2021, §89.1040 was revised to formally remove the pathway for SLD eligibility through a significant discrepancy method. However, since that time, this method is sometimes being substituted for the pattern of strengths and weaknesses model of determining eligibility. While a multi-disciplinary team can always make the decision to utilize formal assessments in an evaluation, the agency has determined it is important to highlight that requiring a significant variance to be present is not a requirement for an SLD determination.

Comment: An individual commented regarding classroom observations for purposes of SLD eligibility and questioned whether the agency intended to prohibit the general education classroom teacher from conducting the required observation.

Response: The agency disagrees and has determined no changes to the rule text are necessary, as the multi-disciplinary team would best determine who will conduct the required observation. The agency does note that it would be difficult for the child's general education classroom teacher to be the one conducting the observation, as that teacher would be responsible for observing and teaching all other students in the classroom.

Comment: An individual commented that in subsection (c)(9)(F), the agency did not make similar amendments to the text about "regular" teachers as it did in other portions of the rule.

Response: The agency agrees and has modified subsection (c)(9)(F) at adoption to use the term "general education" teacher.

Comment: DRTx commented that the term "remedial reading teacher" should be defined or updated.

Response: The agency disagrees with making a change at this time, as this may be a substantive change that would need to allow for additional public comment.

Comment: TCASE commented that subsection (c)(9)(G)(i) should be revised to remove the phrase "a suspected specific learning disability" as it is redundant.

Response: The agency agrees and has determined that rephrasing would be beneficial. At adoption, subsection (c)(9)(G)(i) has been revised to clarify that the process when the SLD of dyslexia is suspected.

Comment: TCASE commented that subsection (c)(9)(G)(iv) should be deleted because SLD is the qualifying eligibility category.

Response: The agency disagrees. While SLD will remain as the overall eligibility category, the identification and use of the terms dyslexia and/or dysgraphia are important to use in the evaluation report, if either or both of those disabilities are identified.

Comment: Eleven individuals and the Alliance of and for Visually Impaired Texans commented that the elements of the expanded core curriculum should not be included in an evaluation for eligibility as a student with a visual impairment, stating that this is part of considerations after eligibility is determined.

Response: While the agency disagrees with the premise that any area of the expanded core curriculum is not appropriate until after eligibility is determined, the agency agrees that without additional clarification and technical assistance, the addition of the text may be confusing to the field. Section 89.1040(c)(12)(A)(iv)

has been modified at adoption to remove reference to the expanded core curriculum.

Comment: Twelve individuals, TxSER, and Autism Speaks, requested additional clarification regarding eligibility as a child under three years of age with a visual impairment.

Response: The agency agrees that clarification is necessary and has modified subsection (c)(12)(C) the definition at adoption to closely mirror the federal regulations regarding an infant or toddler with a disability.

Comment: DRTx, TCASE, and the Arc of Texas commented that the organizations agree with the transition to the developmental delay category. The Arc of Texas added that guidance will be crucial during the transition.

Response: The agency agrees.

Comment: Over 100 individuals, Frisco Independent School District (ISD), the Texas Association of School Psychologists, and TCASE commented the age range for developmental delay eligibility should change from ages 3-5 to ages 3-9 to be consistent with federal regulations.

Response: The agency agrees to align with the allowable age range in federal regulations and has updated in subsection (c)(13) the developmental delay eligibility to age 9 at adoption.

Comment: Two individuals commented in support of the eligibility category of developmental delay and requested to keep the ages 3-5.

Response: The agency disagrees. The agency originally proposed the age range of 3-5 to match the ages used in the non-categorical eligibility category. However, based on public comment, the agency has expanded the age range at adoption to allow developmental delay through 9 years of age to match the age range in federal regulations.

Comment: TxSER commented with concern about assigning what appears to be a high standard of deviation from the mean for eligibility for developmental delay, particularly for a child with a delay in only one or two areas. TxSER further suggested that subsection (c)(12)(C) supplant (c)(12)(A) and (B).

Response: The agency disagrees and clarifies that the eligibility provisions under any of the subsections would be allowable.

§89.1050, The Admission, Review, and Dismissal Committee

Comment: Fifty-seven individuals commented in full support of the proposed changes to §89.1050 in their entirety.

Response: The agency agrees.

Comment: TxSER, DRTx, and the Arc of Texas expressed support for the clarification of the term "parent" for consistent alignment.

Response: The agency agrees.

Comment: TxSER, DRTx, and the Arc of Texas recommended that §89.1050(c)(3) include the requirements for students with dyslexia in the ARD committee membership.

Response: The agency agrees. At adoption, subsection (c)(3)(D) has been added to mention the required ARD committee member when a student is suspected or identified with dyslexia and the ARD committee will be discussing initial or continued eligibility for special education services.

§89.1055, Content of the Individualized Education Program

Comment: Fifty-seven individuals commented in full support of the proposed changes to §89.1055 in their entirety.

Response: The agency agrees.

Comment: DRTx, the Arc of Texas, and TxSER commented in support of the proposed changes regarding measurable annual goals.

Response: The agency agrees.

Comment: One individual commented asking if every student's IEP would have to include the alternate assessment participation form, even if determined by the ARD committee as not eligible for that assessment.

Response: The agency agrees that there may have been confusion with the proposed amendment. Therefore, at adoption, subsections (c) and (d) have been reordered and reworded to clarify that the form is required only when the IEP needs to include the statement regarding the student not participating in the general assessment.

Comment: Autism Speaks commented that the terminology "autism supplement" should be used in subsection (g).

Response: The agency disagrees and has determined that naming the supplement in rule is unnecessary.

Comment: DRTx, the Arc of Texas, Autism Speaks, and TxSER commented that subsection (g)(4) should reflect alignment with the subsection about behavior intervention plans (BIPs).

Response: The agency agrees and has added in subsection (g)(4)(B) a reference to implementation and review of a BIP in accordance with subsection (j).

Comment: DRTx, the Arc of Texas, Autism Speaks, and TxSER commented that subsection (g)(5) should be modified to include more detail around future planning for students with autism, specifically to include "integrated learning and training" and "self-determination and self-advocacy skills."

Response: The agency agrees and has added text in subsection (g)(5) to refer to learning and training, as well as self-advocacy and self-determination skills.

Comment: The Texas Dyslexia Coalition commented that text should be added to reference the requirement to adhere to the State Board of Education rule in 19 TAC §74.28 and the *Dyslexia Handbook* when developing and implementing an IEP for a student who has been identified with dyslexia or a related disorder.

Response: The agency agrees and has added new subsection (i) at adoption.

Comment: DRTx, the Arc of Texas, and TxSER commented in support of aligning both federal and state transition requirements to age 14.

Response: The agency agrees.

Comment: DRTx, the Arc of Texas, Autism Speaks, and TxSER commented that futures planning for students with autism should be incorporated or mentioned in the transition subsections.

Response: The agency disagrees that this is necessary, as the futures planning subsection already cross references the transition subsections.

Comment: DRTx, the Arc of Texas, and TxSER commented that the autism supplement as well as all other supplements should be mentioned as having to be reviewed annually in proposed

subsection (n). Autism Speaks had a similar comment but referenced the addition in subsection (g).

Response: The agency agrees in part and disagrees in part. The agency disagrees that adding reference to the autism supplement in proposed subsection (o), adopted as subsection (n), is appropriate, as that subsection specifically addresses the relevant transition subsections. However, based on another comment subsection (g) has been revised at adoption to refer to a review of the strategies at least annually.

Comment: DRTx, the Arc of Texas, Autism Speaks, and TxSER commented that a provision should be added reflecting that part of a parent's understanding of the meeting proceedings include an opportunity to review the required elements of the IEP in writing before signing.

Response: The agency disagrees that adding this requirement is necessary as part of the rule, as this practice would generally be considered as working in a collaborative manner as the rule already states. The agency will consider including in technical assistance a reminder to parents and districts of this opportunity.

Comment: Three individuals commented in support of the change to provisions addressing students who register during the summer months.

Response: The agency agrees.

Comment: Three individuals asked to clarify the process when a student transfers to a district with outdated evaluations or IEPs.

Response: The comment is outside the scope of proposed rule-making. However, the agency will consider the question in technical assistance resources.

Comment: Frisco ISD asked for clarification on students who register in new districts during the school year prior to the year for which they are registering.

Response: The agency is unable to provide clarification as it is unclear what the district is asking.

Comment: The Texas Classroom Teachers Association commented that teachers need to be provided copies of students' IEPs prior to the first day of the school year and suggested that language be added to the subsection surrounding transfer students to provide relevant teachers with students' IEPs.

Response: The agency disagrees that additional text is necessary. The only reason IEPs would not be given to teachers prior to the first day of school in this situation is if the school is not yet in possession of the IEP or if the school is in the process of developing and adopting an IEP within the timelines. A critical part of implementing an IEP is providing IEP access to teachers.

§89.1131, Qualifications of Special Education, Related Service, and Paraprofessional Personnel

Comment: Fifty-seven individuals commented in full support of the proposed changes to §89.1131 in their entirety.

Response: The agency agrees.

Comment: One individual commented that proposed subsection (b) is unclear.

Response: The agency disagrees. This wording mirrors the statutory language in TEC, §29.0032.

Comment: One individual commented that providers of dyslexia instruction should be required to be special education certified.

Response: The agency disagrees, as statute does not require this unless the providers are employed in a special education position that requires such certification.

Comment: Two individuals questioned whether the terms para-professionals and educational aides, as used in subsection (d), were describing the same or different types of positions.

Response: The agency agrees that clarification would be helpful and, at adoption, has clarified in subsection (d) that paraprofessionals working as educational aides must be certified.

Comment: One advocate, TxSER, and Texas Parent 2 Parent, commented regarding the establishment of an educational representative for students with disabilities who have reached the age of 18 but who are not capable of making informed educational decisions.

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

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING SPECIAL EDUCATION SERVICES

DIVISION 2. CLARIFICATION OF PROVISIONS IN FEDERAL REGULATIONS

19 TAC §§89.1011, 89.1040, 89.1050, 89.1055

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §28.025, which requires the State Board of Education (SBOE) to determine curriculum requirements for a high school diploma and certificate; TEC, §29.001, which requires the agency to develop and modify as necessary a statewide plan for the delivery of services to children with disabilities that ensures the availability of a free appropriate public education to children between the ages of 3-21; TEC, §29.003, which requires the agency 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, which establishes criteria for developing a student's individualized education program prior to a student enrolling in a special education program; TEC, §29.010, which requires the agency 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 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, 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, §29.017, which establishes criteria for the transfer of rights from a parent to a child with a disability who is 18 or older or whose disabilities have been removed under Texas Family Code, Chapter 31, to make educational decisions; TEC, §29.018, which requires the commissioner to make grants available to school districts to support covering the cost of education services for students with disabilities; TEC, §29.0031, as amended by House Bill (HB) 3928, 88th Texas Legislature, Regular Session, 2023, which establishes requirements of a district if it is suspected or has reason to suspect that a student may have dyslexia; TEC, §29.0032, as amended

by HB 3928, 88th Texas Legislature, Regular Session, 2023, which establishes criteria for providers of dyslexia instruction; TEC, §30.001, which requires the commissioner, with approval by the SBOE, to establish a plan for the coordination of services to students with a disability; TEC, §30.002, which requires the agency to develop and administer a statewide plan for the education of children with visual impairments; TEC, §30.083, which requires the development of a statewide plan for educational services for students who are deaf or hard of hearing; TEC, §37.0021, which establishes the use of confinement, restraint, seclusion, and time-out for a student with a disability; TEC, §48.004, which requires the commissioner to adopt rules necessary for administering the Foundation School Program; TEC, §48.102, which establishes criteria for school districts to receive an annual allotment for students in a special education program; Texas Government Code, §392.002, which defines "authority" or "housing authority;" 34 Code of Federal Regulations (CFR), §300.8, which defines terms regarding a child with a disability; 34 CFR, §300.100, which establishes eligibility criteria for a state to receive assistance; 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 education available; 34 CFR, §300.111, which defines the requirement of the state to have policies and procedures in place regarding child find; 34 CFR, §300.114, which defines least restrictive environment requirements; 34 CFR, §300.121, which establishes the requirement for a state to have procedural safeguards; 34 CFR, §300.122, which establishes the requirement for evaluation of children with disabilities; 34 CFR, §300.124, which establishes the requirement of the state to have policies and procedures in place regarding the transfer of children from the Part C program to the preschool program; 34 CFR, §300.129, which establishes criteria for the state responsibility regarding children in private schools; 34 CFR, §300.147, which establishes the criteria for the state education agency when implementing the responsibilities each must ensure for a child with a disability who is placed in or referred to a private school or facility by a public agency; 34 CFR, §300.149, which establishes the state education agency's responsibility for general supervision; 34 CFR, §300.151, which establishes the criteria for the adoption of state complaint procedures; 34 CFR, §300.152, which establishes the criteria for minimum state complaint procedures; 34 CFR, §300.153, which establishes the criteria for filing a complaint; 34 CFR, §300.156, which establishes the criteria for the state education agency to establish and maintain qualification procedures for personnel serving children with disabilities; 34 CFR, §300.320, which defines the requirements for an individualized education program (IEP); 34 CFR, §300.322, which establishes the requirement for a parent participation opportunity at each IEP team meeting; 34 CFR, §300.323, which establishes the timeframe for when IEPs must be in effect; 34 CFR, §300.301, which establishes the requirement for initial evaluations; 34 CFR, §300.302, which clarifies that screening for instructional purposes is not an evaluation; 34 CFR, §300.303, which establishes the criteria for reevaluations; 34 CFR, §300.304, which establishes the criteria for reevaluation procedures; 34 CFR, §300.305, which establishes the criteria for additional requirements for evaluations and reevaluations; 34 CFR, §300.306, which defines the determination of eligibility; 34 CFR, §300.307, which establishes the criteria for determining specific learning disabilities; 34 CFR, §300.308, which establishes criteria for additional group members in determining whether a child is suspected of having a specific learning disability as defined in 34 CFR, §300.8; 34 CFR, §300.309, which establishes criteria

for determining the existence of a specific learning disability; 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, §300.500, which establishes the responsibility of a state education agency and other public agencies to ensure the establishment, maintenance, and implementation of procedural safeguards; 34 CFR, §300.506, which establishes the requirement of each public agency to establish procedures to resolve disputes through a mediation process; 34 CFR, §300.507, which establishes criteria for filing a due process complaint; and 34 CFR, §300.600, which establishes requirements for state monitoring and enforcement.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§28.025; 29.001; 29.003; 29.0031, as amended by House Bill (HB) 3928, 88th Texas Legislature, Regular Session, 2023; 29.0032, as amended by HB 3928, 88th Texas Legislature, Regular Session, 2023; 29.004; 29.005; 29.010; 29.011; 29.0111; 29.012; 29.017; 29.018; 30.001; 30.002; 30.083; 37.0021; 48.004; and 48.102; Texas Government Code, §392.002; and 34 Code of Federal Regulations, §§300.8, 300.100, 300.101, 300.111, 300.114, 300.121, 300.122, 300.124, 300.129, 300.147, 300.149, 300.151, 300.152, 300.153, 300.156, 300.320, 300.322, 300.323, 300.301, 300.302, 300.303, 300.304, 300.305, 300.306, 300.307, 300.308, 300.309, 300.310, 300.311, 300.500, 300.506, 300.507, and 300.600.

§89.1011. *Full Individual and Initial Evaluation.*

(a) Referral of students for a full individual and initial evaluation (FIIE) for possible special education and related services must be a part of the school district's multi-tiered system of academic and behavioral supports. Students not making progress in the general education classroom should be considered for all interventions and support services available to all students, such as tutorial; compensatory; response to evidence-based intervention; and other academic or behavior support services. The school district cannot require a student to participate in interventions and support services for any specific length of time prior to a referral being made or an FIIE being conducted. If the student continues to experience difficulty in the general education classroom with the provision of interventions and support services or at any time district personnel suspect a disability and a possible need for special education and related services, district personnel must refer the student for an FIIE. A referral or request for an FIIE may be initiated at any time by school personnel, the student's parents or legal guardian, or another person involved in the education or care of the student. While an FIIE is being conducted, a student must continue to receive any necessary interventions and support services to target their academic or behavioral needs.

(b) If a parent submits a written request to a school district's director of special education services or to a district administrative employee, such as a campus principal, for an FIIE of a student, the school district must, not later than the 15th school day after the date the district receives the request:

(1) provide the parent with prior written notice of its proposal to conduct an evaluation consistent with 34 Code of Federal Regulations (CFR), §300.503; a copy of the procedural safeguards notice required by 34 CFR, §300.504; a copy of the Overview of Special Education for Parents form created by the Texas Education Agency (TEA); and an opportunity to give written consent for the evaluation; or

(2) provide the parent with prior written notice of its refusal to conduct an evaluation consistent with 34 CFR, §300.503; a copy of

the Overview of Special Education for Parents form created by TEA; and a copy of the procedural safeguards notice required by 34 CFR, §300.504.

(c) When a school district initiates the referral for an FIIE of a student, the district must provide the parent with the information and materials described in subsection (b)(1) of this section.

(d) Except as otherwise provided in this section, a written report of an FIIE of a student must be completed as follows:

(1) not later than the 45th school day following the date on which the school district receives written consent for the evaluation from the student's parent, except that if a student has been absent from school during that period on three or more school days, that period must be extended by a number of school days equal to the number of school days during that period on which the student has been absent; or

(2) for students under five years of age by September 1 of the school year and not enrolled in public school and for students enrolled in a private or home school setting, not later than the 45th school day following the date on which the school district receives written consent for the evaluation from the student's parent.

(e) Notwithstanding the timelines in subsections (d) and (g) of this section, if the school district received the written consent for the evaluation from the student's parent:

(1) at least 35 but less than 45 school days before the last instructional day of the school year, the written report of an FIIE of a student must be provided to the student's parent not later than June 30 of that year;

(2) at least 35 but less than 45 school days before the last instructional day of the school year but the student was absent three or more school days between the time that the school district received written consent and the last instructional day of the school year, the timeline in subsection (d)(1) of this section applies to the date the written report of the FIIE must be completed; or

(3) less than 35 school days before the last day of the school year, the timeline in subsection (d)(1) of this section applies to the date the written report of the FIIE must be completed.

(f) If a student was in the process of being evaluated for special education eligibility by a school district and enrolls in another school district before the previous school district completed the FIIE, the new school district must coordinate with the previous school district as necessary and as expeditiously as possible to ensure a prompt completion of the evaluation in accordance with 34 CFR, §300.301(d)(2) and (e) and §300.304(c)(5). The timelines in subsections (d) and (g) of this section do not apply in such a situation if:

(1) the new school district is making sufficient progress to ensure a prompt completion of the evaluation; and

(2) the parent and the new school district agree to a specific time when the evaluation will be completed.

(g) The admission, review, and dismissal (ARD) committee must make its decisions regarding a student's initial eligibility determination and, if appropriate, individualized education program (IEP) and placement within 30 calendar days from the date of the completion of the written FIIE report. If the 30th day falls during the summer and school is not in session, the ARD committee must meet not later than the 15th school day of the following school year to finalize decisions concerning the student's initial eligibility determination, and, if appropriate, IEP and placement. If the 30th day falls during the summer and school is not in session but an FIIE report indicates that the student would need extended school year services during that summer,

the ARD committee must meet as expeditiously as possible after completion of the report.

(h) A copy of the written FIIE report must be provided to the parent as soon as possible after completion of the report but no later than five school days prior to the initial ARD committee meeting, which will determine a student's initial eligibility under subsection (g) of this section, or not later than June 30 if subsection (e)(1) of this section applies.

(i) For purposes of subsections (b), (d), (e), and (g) of this section, school day does not include a day that falls after the last instructional day of the spring school term and before the first instructional day of the subsequent fall school term. In the case of a school that operates under a school year calendar without spring and fall terms, a school day does not include a day that falls after the last instructional day of one school year and before the first instructional day of the subsequent school year.

(j) For purposes of subsections (d)(1) and (e) of this section, a student is considered absent for the school day if the student is not in attendance at the school's official attendance taking time or alternative attendance taking time as described in the *Student Attendance Accounting Handbook*, adopted by reference under §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook).

§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), the Texas Education Code (TEC), 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 committee. Any evaluation or re-evaluation of a student must be conducted in accordance with 34 CFR, §§300.301-300.306 and 300.122. The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility must include, but is not limited to, the following:

(1) a licensed specialist in school psychology (LSSP)/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 a standardized, individually administered test of cognitive ability in which the overall test score is at least two standard deviations below the mean, when taking into consideration the standard error of measurement of the test; and

(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 may include dysgraphia;
- (IV) basic reading skill, which may include dyslexia;
- (V) reading fluency skills, which may include 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 significant 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 (USC), §6368(3)), and/or mathematics within general education settings delivered by qualified personnel; and

(ii) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal evaluation of student progress during instruction, 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 licensed specialist in school psychology/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, §28.006, 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 admission, review, and dismissal (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. 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 3-9 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 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 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 3-5 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.

§89.1050. 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 school district is responsible for all of the functions for which the IEP team is responsible under federal law and regulations and for which the ARD committee is responsible under state law, including the following:

(1) 34 CFR, §§300.320-300.325, and Texas Education Code (TEC), §29.005 (individualized education programs);

(2) 34 CFR, §§300.145-300.147 (relating to placement of eligible students in private schools by a school district);

(3) 34 CFR, §§300.132, 300.138, and 300.139 (relating to the development and implementation of service plans for eligible students placed by parents in private school who 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, §28.006 (Reading Diagnosis);

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

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

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

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

(12) TEC, §30.002 (Education for Children with Visual Impairments);

(13) TEC, §30.003 (Support of Students Enrolled in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf);

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

(15) TEC, §37.004 (Placement of Students with Disabilities);

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

(17) TEC, Chapter 39, Subchapter B (Assessment of Academic Skills); and

(18) 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) a representative from career and technical education (CTE), preferably the teacher, when considering initial or continued placement of a student in CTE; and

(J) a professional staff member who is on the language proficiency assessment committee who may be a member of the com-

mittee 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.

(3) 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;

(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;

(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

(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.

(4) An ARD committee member is not required to attend an ARD committee meeting if the conditions of either 34 CFR, §300.321(e)(1), regarding attendance, or 34 CFR, §300.321(e)(2), regarding excusal, have been met.

(d) The school district must take steps to ensure that one or both parents are present at each ARD committee meeting or are afforded the opportunity to participate, including notifying the parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed upon time and place. Additionally, a school district must allow parents who cannot attend an ARD committee meeting to participate in the meeting through other methods such as through telephone calls or video conferencing. The school district must provide the parents with written notice of the ARD committee meeting that meets the requirements in 34 CFR, §300.322, at least five school days before the meeting unless the parents agree to a shorter timeframe.

(e) 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.

(f) The school district must provide the parent with a written notice required under subsection (d) or (e)(2) of this section in the parent's native language, unless it is clearly not feasible to do so. If the parent's native language is not a written language, the school district must take steps to ensure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication so that the parent understands the content of the notice.

(g) 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 dis-

trict proposes or refuses the action unless the parent agrees to a shorter timeframe.

§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.

(b) 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. 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 present levels of academic achievement and functional performance 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; and

(B) when a student is removed from the general education setting for a scheduled period of time but the content of the subject/course is not modified (e.g., a student who is progressing on enrolled grade level curriculum but requires a more restrictive environment for a period of time due to behavioral concerns).

(2) Short-term objectives/benchmarks, used as intermediary steps or milestones toward accomplishing an annual goal, may be included in a measurable annual goal. Short-term objectives/benchmarks:

(A) must be included in an annual goal if the ARD committee has determined that a student will not participate in the general state assessment; and

(B) regardless of whether the objectives/benchmarks are related to a student not participating the general state assessment, cannot be used as the criterion to indicate mastery of the annual goal.

(c) 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.

(d) 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, and

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

(e) If the ARD committee determines that the student is in need of extended school year (ESY) services, as described in §89.1065 of this title (relating to Extended School Year Services), then the IEP must

identify which of the goals and objectives in the IEP will be addressed during ESY services.

(f) 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(e).

(g) 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 extended school year 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 (j) of this section;

(5) beginning at any age, consistent with subsection (l) 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 (e.g., 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 assure the correct implementation of techniques and strategies described in the IEP); and

(11) teaching strategies based on peer reviewed, research-based practices for students with autism (for example: those associated with discrete-trial training, visual supports, applied behavior analysis, structured learning, augmentative communication, or social skills training).

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

(i) For students identified with the specific learning disability of dyslexia or a related disorder eligible under §89.1040(c)(9) of this title, the IEP must also be developed and implemented in accordance with the requirements under §74.28 of this title (relating to Students with Dyslexia and Related Disorders), including any handbook adopted in the rule.

(j) 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.

(k) Not later than the first IEP to be in effect when the student turns 14 years of age, the ARD committee must consider and, if appropriate, 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) an appropriate functional vocational evaluation;

(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.

(l) 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.

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

(n) 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 consider and, if appropriate, address the following issues in the student's IEP:

(1) 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.

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

(p) 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 native 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.

(q) 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 administrator agreed or disagreed with the decisions of the ARD committee.

(r) If the student's parent is unable to speak English and the parent's native language is Spanish, the school district must provide a written copy or audio recording of the student's IEP translated into Spanish. If the student's parent is unable to speak English and the parent's native language is a language other than Spanish, the school district must make a good faith effort to provide a written copy or audio recording of the student's IEP translated into the parent's native language.

(1) For purposes of this subsection, a written copy of the student's IEP translated into Spanish or the parent's native language means that all of the text in the student's IEP in English is accurately translated into the target language in written form. The IEP translated into the target language must be a comparable rendition of the 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 native language means that all of the content in the student's IEP in English is orally translated into the target language and recorded with an audio device. A school district is not prohibited from providing the parent with an audio recording of an ARD committee meeting at which the parent was assisted by an interpreter as long as the audio recording provided to the

parent contains an oral translation into the target language of all of the content in the student's IEP in English.

(3) If a parent's native language is not a written language, the school district must take steps to ensure that the student's IEP is translated orally or by other means to the parent in his or her native language or other mode of communication.

(4) Under 34 CFR, §300.322(f), a school district must give a parent a written copy of the student's IEP at no cost to the parent. A school district meets this requirement by providing a parent with a written copy of the student's IEP in English or by providing a parent with a written translation of the student's IEP in the parent's native language in accordance with paragraph (1) of this subsection.

(s) 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) 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.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

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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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



DIVISION 5. SPECIAL EDUCATION AND RELATED SERVICE PERSONNEL

19 TAC §89.1131

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §28.025, which requires the State Board of Education (SBOE) to determine curriculum requirements for a high school diploma and certificate; TEC, §29.001, which requires the agency to develop and modify as necessary a statewide plan for the delivery of services to children with disabilities that ensures the availability of a free appropriate public education to children between the ages of 3-21; TEC, §29.003, which requires the agency 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, which establishes criteria for developing a student's individualized education program prior to a student enrolling in a special education program; TEC, §29.010, which requires the agency 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 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, 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, §29.017, which establishes criteria for the transfer of rights from a parent to a child with a disability who is 18 or older or whose disabilities have been removed under Texas Family Code, Chapter 31, to make educational decisions; TEC, §29.018, which requires the commissioner to make grants available to school districts to support covering the cost of education services for students with disabilities; TEC, §29.0031, as amended by House Bill (HB) 3928, 88th Texas Legislature, Regular Session, 2023, which establishes requirements of a district if it is suspected or has reason to suspect that a student may have dyslexia; TEC, §29.0032, as amended by HB 3928, 88th Texas Legislature, Regular Session, 2023, which establishes criteria for providers of dyslexia instruction; TEC, §30.001, which requires the commissioner, with approval by the SBOE, to establish a plan for the coordination of services to students with a disability; TEC, §30.002, which requires the agency to develop and administer a statewide plan for the education of children with visual impairments; TEC, §30.083, which requires the development of a statewide plan for educational services for students who are deaf or hard of hearing; TEC, §37.0021, which establishes the use of confinement, restraint, seclusion, and time-out for a student with a disability; TEC, §48.004, which requires the commissioner to adopt rules necessary for administering the Foundation School Program; TEC, §48.102, which establishes criteria for school districts to receive an annual allotment for students in a special education program; Texas Government Code, §392.002, which defines "authority" or "housing authority;" 34 CFR, §300.8, which defines terms regarding a child with a disability; 34 CFR, §300.100, which establishes eligibility criteria for a state to receive assistance; 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 education available; 34 CFR, §300.111, which defines the requirement of the state to have policies and procedures in place regarding child find; 34 CFR, §300.114, which defines least restrictive environment requirements; 34 CFR, §300.121, which establishes the requirement for a state to have procedural safeguards; 34 CFR, §300.122, which establishes the requirement for evaluation of children with disabilities; 34 CFR, §300.124, which establishes the requirement of the state to have policies and procedures in place regarding the transfer of children from the Part C program to the preschool program; 34 CFR, §300.129, which establishes criteria for the state responsibility regarding children in private schools; 34 CFR, §300.147, which establishes the criteria for the state education agency when implementing the responsibilities each must ensure for a child with a disability who is placed in or referred to a private school or facility by a public agency; 34 CFR, §300.149, which establishes the state education agency's responsibility for general supervision; 34 CFR, §300.151, which establishes the criteria for the adoption of state complaint procedures; 34 CFR, §300.152, which establishes the criteria for minimum state complaint procedures; 34 CFR, §300.153, which establishes the criteria for filing a complaint; 34 CFR, §300.156, which establishes the criteria for the state education agency to establish and maintain qualification proce-

dures for personnel serving children with disabilities; 34 CFR, §300.320, which defines the requirements for an individualized education program (IEP); 34 CFR, §300.322, which establishes the requirement for a parent participation opportunity at each IEP team meeting; 34 CFR, §300.323, which establishes the timeframe for when IEPs must be in effect; 34 CFR, §300.301, which establishes the requirement for initial evaluations; 34 CFR, §300.302, which clarifies that screening for instructional purposes is not an evaluation; 34 CFR, §300.303, which establishes the criteria for reevaluations; 34 CFR, §300.304, which establishes the criteria for reevaluation procedures; 34 CFR, §300.305, which establishes the criteria for additional requirements for evaluations and reevaluations; 34 CFR, §300.306, which defines the determination of eligibility; 34 CFR, §300.307, which establishes the criteria for determining specific learning disabilities; 34 CFR, §300.308, which establishes criteria for additional group members in determining whether a child is suspected of having a specific learning disability as defined in 34 CFR, §300.8; 34 CFR, §300.309, which establishes criteria for determining the existence of a specific learning disability; 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, §300.500, which establishes the responsibility of a state education agency and other public agencies to ensure the establishment, maintenance, and implementation of procedural safeguards; 34 CFR, §300.506, which establishes the requirement of each public agency to establish procedures to resolve disputes through a mediation process; 34 CFR, §300.507, which establishes criteria for filing a due process complaint; and 34 CFR, §300.600, which establishes requirements for state monitoring and enforcement.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§28.025; 29.001; 29.003; 29.0031, as amended by House Bill (HB) 3928, 88th Texas Legislature, Regular Session, 2023; 29.0032, as amended by HB 3928, 88th Texas Legislature, Regular Session, 2023; 29.004; 29.005; 29.010; 29.011; 29.0111; 29.012; 29.017; 29.018; 30.001; 30.002; 30.083; 37.0021; 48.004; and 48.102; Texas Government Code, §392.002; and 34 Code of Federal Regulations (CFR), §§300.8, 300.100, 300.101, 300.111, 300.114, 300.121, 300.122, 300.124, 300.129, 300.147, 300.149, 300.151, 300.152, 300.153, 300.156, 300.320, 300.322, 300.323, 300.301, 300.302, 300.303, 300.304, 300.305, 300.306, 300.307, 300.308, 300.309, 300.310, 300.311, 300.500, 300.506, 300.507, and 300.600.

§89.1131. *Qualifications of Special Education, Related Service, and Paraprofessional Personnel.*

(a) All special education and related service personnel must be certified, endorsed, or licensed in the area or areas of assignment in accordance with 34 Code of Federal Regulations, §300.156; the Texas Education Code (TEC), §§21.002, 21.003, and 29.304; or appropriate state agency credentials.

(b) In accordance with TEC, §29.0032, a provider of dyslexia instruction is not required to be certified in special education unless the provider is employed in a special education position that requires the certification.

(c) A teacher who holds a special education certificate or an endorsement may be assigned to any level of a basic special education instructional program serving eligible students 3-21 years of age, as defined in §89.1035(a) of this title (relating to Age Ranges for Student

Eligibility), in accordance with the limitation of their certification, except for the following.

(1) Persons assigned to provide speech therapy instructional services must hold a valid Texas Education Agency certificate in speech and hearing therapy or speech and language therapy, or a valid state license as a speech/language pathologist.

(2) Teachers certified in the education of students with visual impairments must be available to students with visual impairments, including deaf-blindness, through one of the school district's instructional options, a shared services arrangement with other school districts, or an education service center.

(3) Teachers certified in the education of students who are deaf or hard of hearing must be available to students who are deaf or hard of hearing, including deaf-blindness, through one of the school district's instructional options, a regional day school program for the deaf, or a shared services arrangement with other school districts.

(4) The following provisions apply to physical education when an admission, review, and dismissal (ARD) committee has determined that a student requires specially designed instruction in physical education.

(A) When the ARD committee has made the determination and the arrangements are specified in the student's individualized education program, physical education may be provided by those authorized under §231.703 of this title (relating to Teacher of Adaptive Physical Education) and the following personnel:

(i) special education instructional or related service personnel who have the necessary skills and knowledge;

(ii) physical education teachers;

(iii) occupational therapists;

(iv) physical therapists; or

(v) occupational therapy assistants or physical therapist assistants working under supervision in accordance with the standards of their profession.

(B) When these services are provided by special education personnel, the district must document that they have the necessary skills and knowledge. Documentation may include, but need not be limited to, inservice records, evidence of attendance at seminars or workshops, or transcripts of college courses.

(5) Teachers assigned full-time or part-time to instruction of students from birth through age two with visual impairments, including deaf-blindness, must be certified in the education of students with visual impairments. Teachers assigned full-time or part-time to instruction of students from birth through age two who are deaf or hard of hearing, including deaf-blindness, must be certified in education for students who are deaf and hard of hearing.

(d) Paraprofessional personnel working as educational aides must be certified and may be assigned to work with eligible students, general and special education teachers, and related service personnel. Educational aides may also be assigned to assist students with special education transportation, serve as a job coach, or serve in support of community-based instruction. Educational aides paid from state administrative funds may be assigned to special education clerical or administrative duties.

(e) Interpreting services for students who are deaf must be provided by an interpreter who is certified in the appropriate language mode(s), if certification in such mode(s) is available. If certification is available, the interpreter must be a certified member of or certified

by the Registry of Interpreters for the Deaf or the Texas Board for Evaluation of Interpreters.

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

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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Cristina De La Fuente-Valadez

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CHAPTER 105. FOUNDATION SCHOOL PROGRAM

SUBCHAPTER DD. COMMISSIONER'S RULES CONCERNING UNIVERSITY INTERSCHOLASTIC LEAGUE ALLOTMENT

19 TAC §105.1031

The Texas Education Agency (TEA) adopts new §105.1031, concerning the allotment for non-enrolled students participating in University Interscholastic League (UIL) activities. The new section is adopted with changes to the proposed text as published in the March 22, 2024 issue of the *Texas Register* (49 TexReg 1840) and will be republished. The new rule implements House Bill (HB) 3708, 88th Texas Legislature, Regular Session, 2023, by establishing provisions related to an allotment for local educational agencies that allow non-enrolled students to participate in UIL activities.

REASONED JUSTIFICATION: HB 547, 87th Texas Legislature, Regular Session, 2021, enabled public school districts to extend the option of UIL participation to non-enrolled students who live within the district's borders. The bill defined a non-enrolled student as one who is home-schooled. The expansion of participation benefited both students and schools, as participating home-schooled students receive the educational enrichment of UIL activities and schools offer their services to more students in their community. However, school districts that provide these opportunities to home-schooled students receive no additional funding to accommodate the increased number of participants in their programs. HB 3708, 88th Texas Legislature, Regular Session, 2023, helps to support school districts in expanding their UIL programs to include home-schooled students by providing for an annual allotment of \$1,500 per UIL activity in which a non-enrolled student participates.

Adopted new §105.1031 implements HB 3708 by establishing definitions; specifying the data used to calculate the estimated and final entitlement; and providing requirements for the UIL activities, student participation, and documentation.

In response to public comment, "for each non-enrolled student" was added to §105.1031(b) at adoption to clarify that the rule provides schools \$1,500 per non-enrolled student per activity.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period began March 22, 2024, and ended April 22, 2024. Following is a summary of public comments received and agency responses.

Comment: The Texas Home School Coalition (THSC) recommended that §105.1031(b) be changed to read, "In accordance with Texas Education Code (TEC), §48.305, a school district or open-enrollment charter school that allows participation of non-enrolled students in UIL activities under TEC, §33.0832, is entitled, for each non-enrolled student, to an annual allotment of \$1,500 for each UIL activity in which the non-enrolled student participates." The organization commented that as proposed, the rule could be misinterpreted to say that the school receives only \$1,500 for the UIL activity regardless of the number of students participating in the activity. THSC stated that the suggested change would ensure that the rule is understood to provide schools \$1,500 per non-enrolled student per activity as opposed to \$1,500 per activity that has a non-enrolled student participating.

Response: The agency agrees and added "for each non-enrolled student" to §105.1031(b) at adoption to clarify that the rule provides schools \$1,500 per non-enrolled student per activity.

Comment: A parent expressed support for the rule and stated that it would likely convince the local district to allow the parent's child, who is home-schooled, to participate in the band program.

Response: The agency agrees with support for the rule.

Comment: An individual commented that the proposed rule limits students' participation to only the district in which they live and recommended allowing students to participate with any school district, especially if the district they reside in does not participate. The commenter stated that it is likely that many school districts will not participate, thereby limiting student participation.

Response: The agency disagrees that students should be able to participate with any school district. TEC, §33.0832(e), establishes that a non-enrolled student may only participate in a league activity for the school in the school district that the student would be eligible to attend based on the student's residential address.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §33.0832(a)(2), which defines a non-enrolled student as one who predominantly receives instruction that is provided by the parent, or a person standing in parental authority, in or through the child's home; TEC, §48.004, which requires the commissioner of education to adopt rules as necessary to implement and administer the Foundation School Program; and TEC, §48.305, as added by House Bill 3708, 88th Texas Legislature, Regular Session, 2023, which permits each school district that allows participation for a non-enrolled student to receive an annual allotment of \$1,500 for each league activity in which the student participates.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §§33.0832(a)(2); 48.004; and 48.305, as added by House Bill 3708, 88th Texas Legislature, Regular Session, 2023.

§105.1031. Allotment for Non-enrolled Students Participating in University Interscholastic League Activities.

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

(1) Activity season--The period established by a school or the University Interscholastic League (UIL) in which practices, rehearsals, and interschool competitions or contests take place.

(2) Non-enrolled student--A student who predominantly receives instruction in a general elementary or secondary education program that is provided by the parent, or a person standing in parental authority, in or through the child's home. This may include a student who is designated as enrolled, not in membership.

(3) Participation--The active involvement of a student in a minimum of 75% of a combined total of practices, rehearsals, or preparation activities and associated competitions and contests, including selection as an alternate, for a specific UIL activity.

(4) University Interscholastic League or UIL activity--Any official UIL activity identified in the UIL Constitution and Contest Rules, not including pilot activities.

(b) In accordance with Texas Education Code (TEC), §48.305, a school district or open-enrollment charter school that allows participation of non-enrolled students in UIL activities under TEC, §33.0832, is entitled, for each non-enrolled student, to an annual allotment of \$1,500 for each UIL activity in which the non-enrolled student participates.

(c) In the fall of each school year, as part of the settle-up process for the preceding school year, data reported through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) summer submission will be used to calculate the allotment prescribed in subsection (b) of this section.

(d) UIL activities shall:

(1) be overseen by a school district- or charter school-approved coach or sponsor;

(2) provide for a minimum of four weeks of coach- or sponsor-led practice, rehearsal, or preparation specific to the activity within the designated activity season; and

(3) provide opportunities for students to take part in formal, interschool competitions or contests in the associated activity during the designated activity season.

(e) A school district or charter school may still receive the allotment if a student began the activity season without injury or illness and later experienced an injury or prolonged illness that prevented participation.

(f) For audit purposes, a school district or charter school shall maintain documentation to support the requirements of this section.

(g) School districts and charter schools will be provided with estimated funding during a school year for non-enrolled students based on the prior year's summer TSDS PEIMS data using the same methodology described in subsection (c) of this section to calculate the entitlement. The final entitlement will be based on data from the current school year as provided for in subsection (c) of this section. Any difference from the estimated entitlement will be addressed as part of the Foundation School Program settle-up process according to the provisions of TEC, §48.272.

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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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497

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CHAPTER 112. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SCIENCE

The State Board of Education (SBOE) adopts the repeal of §§112.10-112.16, 112.17-112.20, and 112.31-112.39, concerning Texas Essential Knowledge and Skills (TEKS) for science. The repeals are adopted without changes to the proposed text as published in the May 17, 2024 issue of the *Texas Register* (49 TexReg 3472) and will not be republished. The repeals remove the TEKS for Kindergarten-Grade 12 science and related implementation language that will be superseded by 19 TAC §§112.1-112.7, 112.25-112.28, and 112.41-112.51 beginning with the 2024-2025 school year.

REASONED JUSTIFICATION: In accordance with statutory requirements that the SBOE identify by rule the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject. In late 2019, the SBOE began the process to review and revise the TEKS for Kindergarten-Grade 12 science. At the recommendation of Work Group A, the SBOE directed the work groups to follow a backward-by-design approach to the revisions to the Kindergarten-Grade 12 science TEKS. Consequently, work groups started first with recommendations for revisions to the high school science TEKS. In November 2020, the SBOE approved for second reading and final adoption revised TEKS for four high school science courses: Biology, Chemistry, Physics, and Integrated Physics and Chemistry. At the June 2021 SBOE meeting, the board approved for second reading and final adoption new TEKS for Specialized Topics in Science and revised standards for Aquatic Science, Astronomy, Earth Science Systems (formerly titled Earth and Space Science), and Environmental Systems. At the November 2021 SBOE meeting, the board approved for second reading and final adoption new science TEKS for Kindergarten-Grade 8 with an implementation date of the 2024-2025 school year. At the November 2022 SBOE meeting, the board approved for second reading and final adoption the proposed amendment to §112.41 to ensure implementation language for all science courses was consistent.

The repeals remove the TEKS for Kindergarten-Grade 12 science and related implementation language that will be superseded by 19 TAC §§112.1-112.7, 112.25-112.28, and 112.41-112.51 beginning with the 2024-2025 school year.

The SBOE approved the repeals for first reading and filing authorization at its April 12, 2024 meeting and for second reading and final adoption at its June 28, 2024 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the repeals for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2025-2026 school year. The earlier effective date will remove the TEKS for Kindergarten-Grade 12 science and re-

lated implementation language that will be superseded by 19 TAC §§112.1-112.7, 112.25-112.28, and 112.41-112.51 beginning with the 2024-2025 school year. The effective date is August 1, 2024.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began May 17, 2024, and ended at 5:00 p.m. on June 17, 2024. The SBOE also provided an opportunity for registered oral and written comments at its June 2024 meeting in accordance with the SBOE board operating policies and procedures. No public comments were received.

SUBCHAPTER A. ELEMENTARY

19 TAC §§112.10 - 112.16

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

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 July 12, 2024.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



SUBCHAPTER B. MIDDLE SCHOOL

19 TAC §§112.17 - 112.20

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

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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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



SUBCHAPTER C. HIGH SCHOOL

19 TAC §§112.31 - 112.39

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

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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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



CHAPTER 126. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR TECHNOLOGY APPLICATIONS

The State Board of Education (SBOE) adopts the repeal of §§126.5-126.7 and 126.13-126.16, concerning Texas Essential Knowledge and Skills (TEKS) for technology applications. The repeals are adopted without changes to the proposed text as published in the May 17, 2024, issue of the *Texas Register* (49 TexReg 3473) and will not be republished. The repeals remove the TEKS for Kindergarten-Grade 8 technology applications and related implementation language that will be superseded by 19 TAC §§126.1-126.3, 126.8-126.10, and 126.17-126.19 beginning with the 2024-2025 school year.

REASONED JUSTIFICATION: In accordance with statutory requirements that the SBOE identify by rule the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject. Technology applications is part of the required curriculum for Kindergarten-

Grade 8 only. In 2020, the SBOE approved the consolidation of the high school technology applications courses into the career and technical education TEKS. New elementary and middle school TEKS for technology applications were approved for second reading and final adoption at the June 2022 SBOE meeting and became effective August 7, 2022.

The repeals remove the TEKS for Kindergarten-Grade 8 technology applications and related implementation language that will be superseded by 19 TAC §§126.1-126.3, 126.8-126.10, and 126.17-126.19 beginning with the 2024-2025 school year.

The SBOE approved the repeals for first reading and filing authorization at its April 12, 2024 meeting and for second reading and final adoption at its June 28, 2024 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the repeals for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2025-2026 school year. The earlier effective date will remove the TEKS for Kindergarten-Grade 8 technology applications and related implementation language that will be superseded by 19 TAC §§126.1-126.3, 126.8-126.10, and 126.17-126.19 beginning with the 2024-2025 school year. The effective date is August 1, 2024.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began May 17, 2024, and ended at 5:00 p.m. on June 17, 2024. The SBOE also provided an opportunity for registered oral and written comments at its June 2024 meeting in accordance with the SBOE board operating policies and procedures. No public comments were received.

SUBCHAPTER A. ELEMENTARY

19 TAC §§126.5 - 126.7

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

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 July 12, 2024.

TRD-202403070

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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Proposal publication date: May 17, 2024

For further information, please call: (512) 475-1497



SUBCHAPTER B. MIDDLE SCHOOL

19 TAC §§126.13 - 126.16

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

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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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



CHAPTER 127. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER DEVELOPMENT AND CAREER AND TECHNICAL EDUCATION

The State Board of Education (SBOE) adopts the repeal of §§127.11, 127.12, 127.14-127.16, 127.309, 127.311, 127.402, 127.404-127.408, 127.412, 127.468, 127.473, 127.742, 127.743, 127.751, 127.752, 127.762, and 127.763, concerning Texas Essential Knowledge and Skills (TEKS) for career development and career and technical education (CTE). The repeals are adopted without changes to the proposed text as published in the May 17, 2024 issue of the *Texas Register* (49 TexReg 3475) and will not be republished. The repeals remove the TEKS and related implementation language that will be superseded by 19 TAC §§127.19-127.22, 127.323, 127.417, 127.420, 127.422-127.424, 127.433, 127.482, 127.781, 127.783, 127.784, 127.789, and 127.790 beginning with the 2024-2025 school year.

REASONED JUSTIFICATION: In accordance with statutory requirements that the SBOE identify by rule the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject.

The TEKS for courses associated with 14 CTE career clusters are codified by subchapter in 19 TAC Chapters 127 and 130. In December 2020, the SBOE began initial steps to prepare for the review and revision of CTE courses in programs of study for the education and training; health science; and science, technology, engineering, and mathematics career clusters. Two additional courses eligible to satisfy a graduation requirement in science were also part of the review. The board approved for

second reading and final adoption new TEKS for these courses in November 2021 and January, April, and June 2022.

At the November 2023 SBOE meeting, the board approved new CTE TEKS in 19 TAC Chapter 127 for courses in career preparation and entrepreneurship, which became effective February 13, 2024, and will be implemented beginning in the 2024-2025 school year.

The repeals remove the TEKS and related implementation language that will be superseded by 19 TAC §§127.19-127.22, 127.323, 127.417, 127.420, 127.422-127.424, 127.433, 127.482, 127.781, 127.783, 127.784, 127.789, and 127.790 beginning with the 2024-2025 school year.

The SBOE approved the repeals for first reading and filing authorization at its April 12, 2024 meeting and for second reading and final adoption at its June 28, 2024 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the repeals for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2025-2026 school year. The earlier effective date will remove the TEKS and related implementation language that will be superseded by 19 TAC §§127.19-127.22, 127.323, 127.417, 127.420, 127.422-127.424, 127.433, 127.482, 127.781, 127.783, 127.784, 127.789, and 127.790 beginning with the 2024-2025 school year. The effective date is August 1, 2024.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began May 17, 2024, and ended at 5:00 p.m. on June 17, 2024. The SBOE also provided an opportunity for registered oral and written comments at its June 2024 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comment received and the corresponding response.

Comment. One teacher stated that skills covered in debate are foundational communication skills and after three years of debate a student should be considered a "CTE completer" for a program of study.

Response. This comment is outside the scope of the proposed rulemaking. Additionally, the SBOE provides the following clarification. CTE programs of study are established by the Texas Education Agency, not the SBOE.

SUBCHAPTER B. HIGH SCHOOL

19 TAC §§127.11, 127.12, 127.14 - 127.16

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

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 July 12, 2024.

TRD-202403072

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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Proposal publication date: May 17, 2024

For further information, please call: (512) 475-1497

SUBCHAPTER G. EDUCATION AND TRAINING

19 TAC §127.309, §127.311

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

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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Cristina De La Fuente-Valadez

Director, Rulemaking

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For further information, please call: (512) 475-1497

SUBCHAPTER I. HEALTH SCIENCE

19 TAC §§127.402, 127.404 - 127.408, 127.412

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

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

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**SUBCHAPTER J. HOSPITALITY AND
TOURISM**

19 TAC §127.468, §127.473

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

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 July 12, 2024.

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

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**SUBCHAPTER O. SCIENCE, TECHNOLOGY,
ENGINEERING, AND MATHEMATICS**

**19 TAC §§127.742, 127.743, 127.751, 127.752, 127.762,
127.763**

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

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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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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Proposal publication date: May 17, 2024
For further information, please call: (512) 475-1497

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**CHAPTER 130. TEXAS ESSENTIAL
KNOWLEDGE AND SKILLS FOR CAREER
AND TECHNICAL EDUCATION**

The State Board of Education (SBOE) adopts the repeal of §130.278 and §130.384, concerning Texas Essential Knowledge and Skills (TEKS) for career and technical education (CTE). The repeals are adopted without changes to the proposed text as published in the May 17, 2024 issue of the *Texas Register* (49 TexReg 3477) and will not be republished. The repeals remove the TEKS and related implementation language that will be superseded by 19 TAC §127.275 and §127.318 beginning with the 2024-2025 school year.

REASONED JUSTIFICATION: In accordance with statutory requirements that the SBOE identify by rule the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject.

The TEKS for courses associated with 14 CTE career clusters are codified by subchapter in 19 TAC Chapters 127 and 130. In December 2020, the SBOE began initial steps to prepare for the review and revision of CTE courses in programs of study for the education and training; health science; and science, technology, engineering, and mathematics career clusters. Two additional courses eligible to satisfy a graduation requirement in science were also part of the review. The board approved for second reading and final adoption new TEKS for these courses in November 2021 and January, April, and June 2022.

At the November 2023 SBOE meeting, the board approved new CTE TEKS in 19 TAC Chapter 127 for courses in career preparation and entrepreneurship, which became effective February 13, 2024, and will be implemented beginning in the 2024-2025 school year.

The repeals remove the TEKS and related implementation language that will be superseded by 19 TAC §127.275 and §127.318 beginning with the 2024-2025 school year.

The SBOE approved the repeals for first reading and filing authorization at its April 12, 2024 meeting and for second reading and final adoption at its June 28, 2024 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the repeals for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2025-2026 school year. The earlier effective date will remove the TEKS and related implementation language that will be

superseded by 19 TAC §127.275 and §127.318 beginning with the 2024-2025 school year. The effective date is August 1, 2024.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began May 17, 2024, and ended at 5:00 p.m. on June 17, 2024. The SBOE also provided an opportunity for registered oral and written comments at its June 2024 meeting in accordance with the SBOE board operating policies and procedures. No public comments were received.

SUBCHAPTER J. HUMAN SERVICES

19 TAC §130.278

STATUTORY AUTHORITY. The repeal is adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

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 July 12, 2024.

TRD-202403077

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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Proposal publication date: May 17, 2024

For further information, please call: (512) 475-1497



SUBCHAPTER N. MARKETING

19 TAC §130.384

STATUTORY AUTHORITY. The repeal is adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

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 July 12, 2024.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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Proposal publication date: May 17, 2024

For further information, please call: (512) 475-1497



CHAPTER 227. PROVISIONS FOR EDUCATOR PREPARATION CANDIDATES

The State Board for Educator Certification (SBEC) adopts amendments to 19 Texas Administrative Code (TAC) §§227.1, 227.5, 227.10, and 227.103, concerning provisions for educator preparation candidates. The amendments are adopted without changes to the proposed text as published in the March 15, 2024 issue of the *Texas Register* (49 TexReg 1629) and will not be republished. The adopted amendments make conforming changes to the Chapter 227 rules given the adopted updates to Chapter 228, Requirements for Educator Preparation Programs, and Chapter 230, Professional Educator Preparation and Certification. The adopted changes also update the Pre-Admission Content Test (PACT) figure to include the adopted new certificates and aligned PACT exams as well as adopted cut scores.

REASONED JUSTIFICATION: The SBEC rules in 19 TAC Chapter 227 are organized as follows: Subchapter A, Admission to Educator Preparation Programs, and Subchapter B, Preliminary Evaluation of Certification Eligibility. These subchapters establish requirements for admission into an educator preparation program (EPP) and preliminary evaluation of certification eligibility.

These requirements ensure that EPPs attract and admit applicants who demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of Texas.

The following is a description of the adopted amendments to 19 TAC Chapter 227. The adopted amendments update rule references based on the adopted revisions to 19 TAC Chapter 228 and update the PACT figure to include the new certificate names and aligned PACT names and associated passing standards based on the adopted revisions to 19 TAC Chapter 230.

Subchapter A. Admission to Educator Preparation Programs

Adopted Amendment to 19 TAC §227.1. General Provisions

The adopted amendment to 19 TAC §227.1(c)(3) updates the statutory reference from Texas Education Code (TEC), §21.044(e)(3), to TEC, §21.044(g), to conform with updates to statute.

Adopted Amendment to 19 TAC §227.5. Definitions

The adopted amendment to the definition for alternative certification program in 19 TAC §227.5(2) updates the reference from 19 TAC §228.20(a) to adopted new 19 TAC §228.25, Governance of Educator Preparation Programs. The adopted amendment to the definition for clinical teaching in 19 TAC §227.5(7) updates the reference from 19 TAC §228.35 to adopted new 19 TAC §228.67, Clinical Teaching. The adopted amendment to the definition for content pedagogy examinations in 19 TAC §227.5(9) changes "examinations" to "examination" to mirror use of the singular term in the definition for content certification examination in 19 TAC §227.5(8).

Adopted Amendment to 19 TAC §227.10. Admission Criteria

The adopted amendment to 19 TAC §227.10(a)(1) updates the language from "an undergraduate university program" to "a university undergraduate or post-baccalaureate program" to align with the exit policy in adopted new 19 TAC §228.31(b), Minimum Educator Preparation Program Obligations to All Candidates.

The adopted amendment to 19 TAC §227.10(g) updates the reference from 19 TAC §228.35(i)(2) to adopted new 19 TAC §228.45(b), Coursework and Training Requirements for Early Childhood-Grade 3. The adopted amendment also expands the list of certificates, from 17 to 22, that a certified educator may hold to enroll in an EPP and complete the course of instruction that qualifies him or her to pursue the early childhood certification, including five adopted new Core: Early Childhood-Grade 6 certificates, which were adopted updates to 19 TAC Chapter 233, Categories of Classroom Teaching Certificates.

Adopted Amendment to 19 TAC §227.10(a)(4)(C)

Update to Figure for Pre-Admission Content Test Requirements

The adopted amendment to Figure: 19 TAC §227.10(a)(4)(C) provides two technical edits, including moving the certificate Early Childhood: Prekindergarten-Grade 3 from Core Subjects to Early Childhood and removing the section header language for "Certification category (continued)" throughout to align with the adopted updates to Figure: 19 TAC §230.21(e).

The adopted amendment to Figure: 19 TAC §227.10(a)(4)(C) removes the certificates Core Subjects Early Childhood-Grade 6, Core Subjects Grades 4-8, English Language Arts and Reading Grades 4-8, and English Language Arts and Reading/Social Studies Grades 4-8 to align with adopted updates to Figure: 19 TAC §230.21(e).

The adopted amendment to Figure: 19 TAC §227.10(a)(4)(C) adjusts the passing standard for 790 Texas PACT Core Subjects 4-8 from 94 out of 160 selected response items to 82 out of 128 selected response items, based on updated standard setting committee recommendations.

The adopted amendment to Figure: 19 TAC §227.10(a)(4)(C) also adds the certificates for Core/Fine Arts/Physical Education/Health with the Science of Teaching Reading: Early Childhood-Grade 6, Core/Special Education with the Science of Teaching Reading: Early Childhood-Grade 6, Core/Bilingual Education Spanish with the Science of Teaching Reading: Early Childhood-Grade 6, Core/English as a Second Language with the Science of Teaching Reading: Early Childhood-Grade 6, and Special Education Specialist: Early Childhood-Grade 12 to align with proposed updates to Figure: 19 TAC §230.21(e), including the adopted PACT and associated passing standard.

Finally, the adopted amendment to Figure: 19 TAC §227.10(a)(4)(C) adds a new certification category and PACT for Tamil: Early Childhood-Grade 12, in alignment with adopted updates to Figure: 19 TAC §230.21(e). The adopted amendment also clarifies that a passing standard for Tamil: Early Childhood-Grade 12 would be established in the future, in alignment with the launch of the certificate and associated exam in September 2025, which would be codified in future rulemaking.

Subchapter B. Preliminary Evaluation of Certification Eligibility

Adopted Amendment to 19 TAC §227.103. Application

The adopted amendment to 19 TAC §227.103(a) updates the section to mirror language used in 19 TAC §227.107(a) to reference the schedule of fees for certification services.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began March 15, 2024, and ended April 15, 2024. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the April 26, 2024 meeting's public comment period in accordance with the SBEC board operating policies and procedures. No public comments were received on the proposal.

The State Board of Education (SBOE) took no action on the review of the amendments to §§227.1, 227.5, 227.10, and 227.103 at the June 28, 2024 SBOE meeting.

SUBCHAPTER A. ADMISSION TO EDUCATOR PREPARATION PROGRAMS

19 TAC §§227.1, 227.5, 227.10

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators and states that in proposing rules under TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(4), which specifies the requirements for the issuance and renewal of an educator certificate; TEC, §21.044(a)(2), which requires SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; TEC, §21.044(g)(2) and (3), which requires each educator preparation program (EPP) to provide certain information related to the effect of supply and demand forces on the educator workforce of the state and the performance over time of the EPP; TEC, §21.0441, which requires SBEC to adopt rules setting certain admission requirements for EPPs; TEC, §21.0489(c), which requires SBEC to adopt rules establishing eligibility requirements for an Early Childhood: Prekindergarten-Grade 3 certificate; TEC, §21.049(a), which authorizes SBEC to propose rules providing for educator certification programs as an alternative to traditional EPPs; and TEC, §21.050(a), which requires a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, that is related to the curriculum as prescribed under TEC, Chapter 28, Subchapter A; and Texas Occupations Code (TOC), §53.151, which sets the definitions of "licensing authority" and "occupational license" to have the meanings assigned to those terms by TOC, §58.001; TOC, §53.152, which requires EPPs to provide applicants and enrollees certain notice regarding potential ineligibility for a certificate based on convicted offenses, the SBEC rules regarding the certificate eligibility of an individual with a criminal history, and the right of the individual to request a criminal history evaluation letter; and TOC, §53.153, which requires an EPP to refund tuition, application fees, and examination fees paid by an individual if the EPP failed to provide the required notice under the TOC, §53.152, to an individual who was denied a certificate because the individual was convicted of an offense.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§21.031; 21.041(b)(1) and (4); 21.044(a)(2) and (g)(2) and (3); 21.0441; 21.0489(c); 21.049(a); and 21.050(a); and Texas Occupations Code, §§53.151, 53.152, and 53.153.

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 July 15, 2024.

TRD-202403102

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Effective date: August 4, 2024

Proposal publication date: March 15, 2024

For further information, please call: (512) 475-1497



SUBCHAPTER B. PRELIMINARY EVALUATION OF CERTIFICATION ELIGIBILITY

19 TAC §227.103

STATUTORY AUTHORITY. The amendment is adopted under Texas Occupations Code (TOC), §53.105, which specifies that a licensing authority may charge a person requesting an evaluation under TOC, Chapter 53, Subchapter D, a fee adopted by the authority. Fees adopted by a licensing authority under TOC, Chapter 53, Subchapter D, must be in an amount sufficient to cover the cost of administering this subchapter.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Occupations Code, §53.105.

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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Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

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For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 511. ELIGIBILITY

SUBCHAPTER H. CERTIFICATION

22 TAC §511.163

The Texas State Board of Public Accountancy (Board) adopts an amendment to §511.163 concerning Board-Approved Ethics

Requirement and Examination on the Rules of Professional Conduct, without changes to the proposed text as published in the May 31, 2024, issue of the *Texas Register* (49 TexReg 3900) and will not be republished.

The Board wants a CPA to be familiar with the Board's Ethics Rules concurrent with initial licensure. With CPA candidates permitted to take the CPA exam at 120 hours, the CPE on the Ethics Rules should not be tied to a rule addressing the exam. The requirement of CPE on the Rules of Professional Conduct is being removed from this rule in order that it may be addressed in Board Rule 523.130 and initial licensure.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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 July 11, 2024.

TRD-202403049

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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Proposal publication date: May 31, 2024

For further information, please call: (512) 305-7842



CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER C. ETHICS RULES: INDIVIDUALS AND SPONSORS

22 TAC §523.130

The Texas State Board of Public Accountancy (Board) adopts an amendment to §523.130 concerning Ethics Course Requirements, without changes to the proposed text as published in the May 31, 2023, issue of the *Texas Register* (49 TexReg 3901) and will not be republished.

The Board wants a CPA to be familiar with the Board's Ethics Rules concurrent with initial licensure. This rule requires a licensee to take CPE on the Rules of Professional Conduct within two years of initial licensure.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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 July 11, 2024.

TRD-202403050

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: July 31, 2024

Proposal publication date: May 31, 2024

For further information, please call: (512) 305-7842



SUBCHAPTER D. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION PROGRAMS AND RULES FOR SPONSORS

22 TAC §523.140

The Texas State Board of Public Accountancy (Board) adopts an amendment to §523.140 concerning Program Standards, without changes to the proposed text as published in the May 31, 2024, issue of the *Texas Register* (49 TexReg 3902) and will not be republished.

A CPE self-study program must contain at least three questions for each "learning objective" to help the student understand the materials studied. The rule was not intended to require three questions for each CPE credit. The rule is being revised to clarify that the questions must be tied to learning objectives.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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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J. Randel (Jerry) Hill

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER O. TEXAS JOBS, ENERGY, TECHNOLOGY AND INNOVATION PROGRAM

34 TAC §9.5004, §9.5013

The Comptroller of Public Accounts adopts amendments to §9.5004, concerning application process, and adopts new §9.5013, concerning hearings, without changes to the proposed text as published in the May 31, 2024, issue of the *Texas Register* (49 TexReg 3916). The rules will not be republished.

This implements aspects of the Texas Jobs, Energy, Technology and Innovation Act ("Act") set forth in Government Code, Subchapter T, Chapter 403, which was enacted by House Bill 5, 88th Legislature, R.S., 2023.

The amendment to §9.5004 deletes subsection (e) to permit the information described by Government Code, §403.622(a) to be posted on the comptroller's website before a determination on administrative completeness. The subsequent paragraphs are relettered accordingly.

New §9.5013 outlines the applicable hearing procedures under the Act.

The comptroller did not receive any comments regarding adoption of the amendment and new section.

The new section and amendments are adopted under Government Code, §403.623, which permits the comptroller to adopt rules regarding the Texas Jobs, Energy, Technology and Innovation Act as necessary to implement that chapter.

The new section and amendments implement Government Code, Chapter 403.

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 July 9, 2024.

TRD-202403026

Victoria North

General Counsel for Fiscal Agency Affairs

Comptroller of Public Accounts

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For further information, please call: (512) 475-2220



CHAPTER 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES

SUBCHAPTER B. PUBLIC PROCUREMENT AUTHORITY AND ORGANIZATION

DIVISION 3. CONTRACT MANAGEMENT GUIDE AND TRAINING

34 TAC §20.133

The Comptroller of Public Accounts adopts an amendment to §20.133, concerning training and certification program, without changes to the proposed text as published in the May 17, 2024, issue of the *Texas Register* (49 TexReg 3485). The rule will not be republished.

The comptroller amends this section to assist state agencies so that they may fulfill their purchasing functions and contract development obligations. The comptroller is responding to the workforce shortage in this career field. Many state agencies rely on contractors and temporary workers to perform purchasing functions. However, without the means to obtain the proper credentials, these contractors and temporary workers are limited in their ability to perform their assigned duties. This amendment is designed to close this gap. Thus, the amendment should increase the number of workers with these vital credentials; create opportunities for these workers to obtain full-time state employment in this career field; and increase the likelihood of retention of these valuable talents and skills for the State of Texas.

This amendment adds a definition of contractor in subsection (b). The amendment of subsection (c)(1) requires contractors retained by a state agency to perform purchasing functions to complete the Statewide Procurement Division's (SPD's) Texas Purchasing Course. In addition, the amendment of subsection (c)(2)(A) requires contractors retained by a state agency to perform contract development functions to become certified as Certified Texas Contract Developers. The amendment of subsection (c)(2)(A) will also correct a minor grammatical error. Finally, the amendment of subsection (d) provides direction to the SPD Director to decide when contractors may obtain such training and certification.

The comptroller did not receive any comments regarding adoption of the amendment.

This amendment is adopted under Government Code, §656.051(a), which grants to the comptroller the authority to establish and offer appropriate training to vendors on a cost recovery basis, as well as the authority to adopt rules to administer Section 656.051. The amendment is also adopted under Government Code, §656.054(a), which requires the comptroller to develop training programs under the State Employees Training Act that meet the needs of state agencies.

The amendment implements Government Code, §656.051 and §656.054.

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 July 10, 2024.

TRD-202403043

Don Neal

General Counsel, Operations and Support Legal Services

Comptroller of Public Accounts

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Proposal publication date: May 17, 2024

For further information, please call: (512) 475-2220



DIVISION 4. IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

34 TAC §20.157

The Comptroller of Public Accounts adopts the amendment to §20.157, concerning adherence to ethical standards, without changes to the proposed text as published in the May 17, 2024,

issue of the *Texas Register* (49 TexReg 3488). The rule will not be republished.

This amendment will require that contractors retained by a state agency to perform purchasing functions or to perform contract development functions must adhere to the same ethical standards required of comptroller employees, and must also avoid all conflicts of interest in their purchasing activities.

Many state agencies rely on contractors and temporary workers to perform purchasing functions. The comptroller amends this section because it is in the public's interest that contractors working in the state public procurement arena in Texas be held to the same ethical standards as comptroller employees.

Contemporaneous with this adoption, the comptroller is adopting an amendment of §20.133, concerning training and certification program. Under that amendment, contractors retained by a state agency to perform purchasing functions must complete the Statewide Procurement Division's (SPD's) Basic Texas Purchaser Course and contractors retained by a state agency to perform contract development functions must become certified as Certified Texas Contract Developers.

The comptroller did not receive any comments regarding adoption of the amendment.

This amendment is adopted under Government Code, §656.051(a), which grants the comptroller the authority to establish and offer appropriate training to vendors, including ethics training, on a cost recovery basis, as well as the authority to adopt rules to administer Government Code, §656.051. The amendment is also adopted under Government Code, §656.054(a), which requires the comptroller to develop training programs under the State Employees Training Act that meet the needs of state agencies.

The amendment implements Government Code, §656.051 and §656.054.

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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Don Neal

General Counsel, Operations and Support Legal Services

Comptroller of Public Accounts

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT

CHAPTER 211. ADMINISTRATION

37 TAC §211.24

The Texas Commission on Law Enforcement (Commission) adopts new 37 Texas Administrative Code §211.24, Licensee

Service Report Database, without changes to the proposed text as published in the May 17, 2024, issue of the *Texas Register* (49 TexReg 3488). The rule will not be republished.

This adopted new rule conforms with the addition of Texas Occupations Code §1701.205 made by Senate Bill 1445 (88R). Texas Occupations Code §1701.205 requires the Commission to establish a public database containing the service reports of each officer licensed by the Commission and to track each user's activity on the public database. It also requires the Commission to adopt rules to exclude the service report for certain officers from the public database if including the service report would create a safety risk for an undercover officer or an officer involved in an active sensitive operation. The adopted new rule outlines the process for an officer or a law enforcement agency to request that the service report for these certain officers be excluded from the public database and states how long certain user activity will be maintained by the Commission.

The public comment period began on May 17, 2024, and ended on June 20, 2024, at the conclusion of the public meeting of the Commission. No public comments were received regarding adoption of the new rule as proposed.

The new rule is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.205, Officer Personal Service Reports. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701. Texas Occupations Code §1701.205 requires the Commission to adopt rules to exclude from the public database service reports for certain officers.

The new rule as adopted affects or implements Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.205, Officer Personal Service Reports. No other code, article, or statute is affected by this adoption.

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 July 12, 2024.

TRD-202403079

Gregory Stevens

Executive Director

Texas Commission on Law Enforcement

Effective date: September 1, 2024

Proposal publication date: May 17, 2024

For further information, please call: (512) 936-7700



CHAPTER 218. CONTINUING EDUCATION

37 TAC §218.3

The Texas Commission on Law Enforcement (Commission) adopts amended 37 Texas Administrative Code §218.3, Legislatively Required Continuing Education for Licensees, with changes to the proposed text as published in the May 17, 2024, issue of the *Texas Register* (49 TexReg 3489). The rule will be republished.

This adopted amended rule conforms with the amendment to Texas Occupations Code §1701.253(q) and the addition of Texas Occupations Code §1701.3525 made by Senate Bill 1852 (88R).

Texas Occupations Code §1701.3525 requires that officers complete not less than 16 hours of training on responding to an active shooter as part of the officer's required 40 hours of continuing education every 24 months. This adopted amended rule clarifies the continuing education requirements regarding the 16 hours of Advanced Law Enforcement Rapid Response Training (ALERRT) for chief administrators licensed as peace officers and all other peace officers. All officers must complete ALERRT Level 1 training by August 31, 2027. Chief administrators licensed as peace officers must complete ALERRT command and leadership training each training unit as part of the 16 hours of required continuing education on responding to an active shooter. This will provide chief administrators with appropriate instruction on commanding an active shooter scene.

The public comment period began on May 17, 2024, and ended on June 20, 2024, at the conclusion of the public meeting of the Commission. One public comment was received supporting the adoption of the amendment in its adopted form.

Gene Ellis, Executive Director of the Texas Police Chiefs Association, agreed with the Commission in removing from the proposed amended rule the requirement that a chief administrator's designated senior level peace officers complete ALERRT command and leadership training because designated senior level peace officers cannot be defined due to the differences in law enforcement agencies across the state. Removal of this requirement does not prevent a chief administrator from sending senior level peace officers to ALERRT command and leadership training.

The amended rule is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.253, School Curriculum. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701 and to establish minimum standards relating to education and training for the licensing of officers. Texas Occupations Code §1701.253 requires the Commission to establish minimum curriculum requirements.

The amended rule as adopted affects or implements Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.253, School Curriculum, §1701.351, Continuing Education Required for Peace Officers, and §1701.3525, Active Shooter Response Training Required for Officers. No other code, article, or statute is affected by this adoption.

The adopted amended rule has been reviewed by legal counsel and found to be a valid exercise of the Commission's legal authority.

§218.3. *Legislatively Required Continuing Education for Licensees.*

(a) Each licensee shall complete the legislatively mandated continuing education in this chapter. Each appointing agency shall allow the licensee the opportunity to complete the legislatively mandated continuing education in this chapter. This section does not limit the number or hours of continuing education an agency may provide.

(b) Each training unit (2 years)

(1) Peace officers shall complete at least 40 hours of continuing education, to include the corresponding legislative update for that unit. Peace officers shall complete not less than 16 hours of training on responding to an active shooter as developed by the Advanced Law Enforcement Rapid Response Training Center at Texas State University-San Marcos. All peace officers shall complete ALERRT Level

1 training not later than August 31, 2027. Training for all chief administrators, who are licensed as peace officers, shall include ALERRT command and leadership training each training unit.

(2) Telecommunicators shall complete at least 20 hours of continuing education to include cardiopulmonary resuscitation training.

(c) Each training cycle (4 years)

(1) Peace officers who have not yet reached intermediate proficiency certification shall complete: Cultural Diversity (3939), Special Investigative Topics (3232), Crisis Intervention (3843) and De-escalation (1849).

(2) Individuals licensed as reserve law enforcement officers, jailers, or public security officers shall complete Cultural Diversity (3939), unless the person has completed or is otherwise exempted from legislatively required training under another commission license or certificate.

(d) Assignment specific training

(1) Police chiefs: individuals appointed as "chief" or "police chief" of a police department shall complete:

(A) For an individual appointed to that individual's first position as chief, the initial training program for new chiefs provided by the Bill Blackwood Law Enforcement Management Institute, not later than the second anniversary of that individual's appointment or election as chief; and

(B) At least 40 hours of continuing education for chiefs each 24-month unit, as provided by the Bill Blackwood Law Enforcement Management Institute.

(2) Constables: elected or appointed constables shall complete:

(A) For an individual appointed or elected to that individual's first position as constable, the initial training program for new constables provided by the Bill Blackwood Law Enforcement Management Institute, not later than the second anniversary of that individual's appointment or election as constable; and

(B) Each 48 month cycle, at least 40 hours of continuing education for constables, as provided by the Bill Blackwood Law Enforcement Management Institute and a 20 hour course of training in civil process to be provided by a public institution of higher education selected by the Commission.

(3) Deputy constables: each deputy constable shall complete a 20 hour course of training in civil process each training cycle. The commission may waive the requirement for this training if the constable, in the format required by TCOLE, requests exemption due to the deputy constable not engaging in civil process as part of their assigned duties.

(4) New supervisors: each peace officer assigned to their first position as a supervisor must complete new supervisor training within one year prior to or one year after appointment as a supervisor.

(5) School-based Law Enforcement Officers: School district peace officers and school resource officers providing law enforcement services at a school district must obtain a school-based law enforcement proficiency certificate within 180 days of the officer's commission or placement in the district or campus of the district.

(6) Eyewitness Identification Officers: peace officers performing the function of eyewitness identification must first complete the Eyewitness Identification training (3286).

(7) Courtroom Security Officers/Persons: any person appointed to perform courtroom security functions at any level shall complete the Courtroom Security course (10999) within 1 year of appointment.

(8) Body-Worn Cameras: peace officers and other persons meeting the requirements of Occupations Code 1701.656 must first complete Body-Worn Camera training (8158).

(9) Officers Carrying Epinephrine Auto-injectors: peace officers meeting the requirements of Occupations Code 1701.702 must first complete epinephrine auto-injector training.

(10) Jailer Firearm Certification: jailers carrying a firearm as part of their assigned duties must first obtain the Jailer Firearms certificate before carrying a firearm.

(11) University Peace Officers, Trauma-Informed Investigation Training: each university or college peace officer shall complete an approved course on trauma-informed investigation into allegations of sexual harassment, sexual assault, dating violence, and stalking.

(e) Miscellaneous training

(1) Human Trafficking: every peace officer first licensed on or after January 1, 2011, must complete Human Trafficking (3270) within 2 years of being licensed.

(2) Canine Encounters: every peace officer first licensed on or after January 1, 2016, must take Canine Encounters (4065) within 2 years of being licensed.

(3) Deaf and Hard of Hearing Drivers: every peace officer licensed on or after March 1, 2016, must complete Deaf and Hard of Hearing Drivers (7887) within 2 years of being licensed.

(4) Civilian Interaction Training: every peace officer licensed before January 1, 2018, must complete Civilian Interaction Training Program (CITP) within 2 years. All other peace officers must complete the course within 2 years of being licensed.

(5) Crisis Intervention Training: every peace officer licensed on or after April 1, 2018, must complete the 40 hour Crisis Intervention Training within 2 years of being licensed.

(6) Mental Health for Jailers: all county jailers must complete Mental Health for Jailers not later than August 31, 2021.

(f) The Commission may choose to accept an equivalent course for any of the courses listed in this chapter, provided the equivalent course is evaluated by commission staff and found to meet or exceed the minimum curriculum requirements of the legislatively mandated course.

(g) The commission shall provide adequate notice to agencies and licensees of impending non-compliance with the legislatively required continuing education.

(h) The chief administrator of an agency that has licensees who are in non-compliance shall, within 30 days of receipt of notice of non-compliance, submit a report to the commission explaining the reasons for such non-compliance.

(i) Licensees shall complete the legislatively mandated continuing education in the first complete training unit, as required, or first complete training cycle, as required, after being licensed.

(j) All peace officers must meet all continuing education requirements except where exempt by law.

(k) The effective date of this section is September 1, 2024.

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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TRD-202403080

Gregory Stevens

Executive Director

Texas Commission on Law Enforcement

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For further information, please call: (512) 936-7700

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 809. CHILD CARE SERVICES

The Texas Workforce Commission (TWC) adopts amendments to the following sections of Chapter 809, relating to Child Care Services:

Subchapter A. General Provisions, §809.2

Subchapter B. General Management, §§809.18 - 809.21

Subchapter C. Eligibility for Child Care Services, §§809.42, 809.51, and 809.56

Subchapter D. Parent Rights and Responsibilities, §809.73

Subchapter E. Requirements to Provide Child Care, §§809.92 - 809.94, and 809.96

Subchapter G. Texas Rising Star Program, §§809.130 - 809.134, and 809.136

Amended §§809.2, 809.18 - 809.21, 809.42, 809.51, 809.56, 809.73, 809.93 - 809.94, 809.96, 809.130 - 809.134, and 809.136 are adopted without changes to the proposal, as published in the May 17, 2024, issue of the *Texas Register* (49 TexReg 3504), and, therefore, the adopted rule text will not be published.

Section 809.92 is adopted with a technical correction, as published in the May 17, 2024, issue of the *Texas Register* (49 TexReg 3504), and, therefore, the adopted rule text will be published.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The amendments to Chapter 809:

--include changes to the Texas Rising Star program based on the program's four-year review as required by Texas Government Code §2308.3155(b);

--clarify that the eligibility period for child care during job search is for 12 months, with a three-month job search period;

--include the requirement that the Parent Share of Cost (PSoC) cannot exceed 7 percent of the family income, regardless of the number of children receiving child care services;

--add children with disabilities as a priority population for child care using contracted slots;

--remove rule provisions that expired on December 1, 2023, and remove specific dates for provisions that became effective on December 1, 2023; and

--change "provider reimbursement" to "provider payment" throughout the rules to align with §809.93, which requires that regulated child care providers (which exclude relatives) be paid prospectively rather than through reimbursement.

Texas Rising Star Four-Year Review

Texas Government Code §2308.3155(b) requires a regular review of the Texas Rising Star program with stakeholder input, and §809.130(e) of this chapter requires the review to take place every four years.

Beginning in July 2023, TWC's Child Care and Early Learning (CC&EL) Division convened a workgroup to review the guidelines. The workgroup included child care program directors from around the state; early childhood advocacy organization representatives; professional development providers; Local Workforce Development Board (Board) staff; and representatives from TWC, the Texas Health and Human Services Commission's (HHSC's) Child Care Regulation (CCR) division, the State Center for Early Childhood, and the Children's Learning Institute (CLI). The workgroup presented several recommendations for modifications to the Texas Rising Star guidelines.

The workgroup also recommended rule changes under Subchapter G, Texas Rising Star Program. TWC considered and incorporated the following workgroup recommendations into the rule amendments:

--Include reference to the points thresholds for high and medium-high CCR deficiencies established in the Texas Rising Star guidelines to the requirements for initial Texas Rising Star certification and to the standards for probationary status.

--Allow Texas Rising Star certified providers to retain certification for up to six months if the program undergoes a facility change and is issued an initial permit from CCR.

Additionally, as part of the Texas Rising Star Program review, CC&EL staff identified the following rule provisions for amendments:

--Modify the CCR licensing review period from 12 months to 6 months.

--Clarify that an Entry Level designated provider may receive new referrals if it is determined that the provider's licensing history will meet certification criteria by the end of the 24-month Entry Level period.

--Make a technical correction to clarify that TWC staff, rather than the three-member Commission, reviews and approves Texas Rising Star mentor education waivers.

--Clarify Texas Rising Star staff background checks as they relate to CCR background check requirements.

--Remove PSoC reductions for selecting a Texas Rising Star provider.

12-Month Eligibility Period for Child Care during Job Search

The rule amendments clarify that the eligibility period for child care during job search is for 12 months, with a three-month job search period, as allowed under 45 Code of Federal Regulations (CFR) §98.21(a)(2)(iii). TWC notes that this is not a change in policy. Current rule language in §809.56 of this chapter states

that eligibility for child care during job search is limited to three months unless the parent becomes employed and meets the work requirements before the end of the job search period. If the parent meets work requirements, child care would continue for 12 months, inclusive of the three-month job search period.

The amended rules retain these time frames, but the rule language is amended to clarify that the child care eligibility period is for 12 months provided that the parent meets work requirements within the first three months of child care.

Capping the PSoC at 7 Percent of Family Income

The amended rules include the requirement that the PSoC cannot exceed 7 percent of the family income, regardless of the number of children receiving child care services. The amended language complies with the recently amended Child Care Development Fund (CCDF) regulations in CFR 45 §98.45(l), as published in the *Federal Register* (89 FR 15366 - 15417) on March 1, 2024, with an effective date of April 30, 2024.

Remove Expired Provisions

On September 13, 2022, TWC amended Chapter 809 with certain provisions set to be effective prior to December 1, 2023, and subsequently replaced by provisions set to be effective on December 1, 2023. The provisions effective prior to December 1, 2023, and those set to be effective on December 1, 2023, were adopted and published in the *Texas Register* (47 TexReg 6437). The affected sections are:

- §809.18. Maintenance of a Waiting List
- §809.19. Assessing the Parent Share of Cost
- §809.20. Maximum Provider Payment Rates
- §809.93. Provider Payment

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. GENERAL PROVISIONS

TWC adopts the following amendments to Subchapter A:

§809.2. Definitions

Section 809.2 is amended to change "provider reimbursement" to "provider payment" in the definitions of "child care contractor" and "child care subsidies" to align with §809.93, which requires that child care providers be paid prospectively rather than as a reimbursement.

SUBCHAPTER B. GENERAL MANAGEMENT

TWC adopts the following amendments to Subchapter B:

§809.18. Maintenance of a Waiting List

Section 809.18 is amended to remove the provisions that are no longer effective as of December 1, 2023, and leaves the sections that were previously adopted by the Commission with an effective date of December 1, 2023.

Specifically, the rules that became effective December 1, 2023, removed the Board-determined process for determining the child is potentially eligible for services and the frequency in which parent information is updated and maintained. The rules also created a statewide policy to require that Boards contact the parent every three months and remove the child from the waiting list

if the parent indicates that child care services are no longer required or does not respond to the Board regarding the continued need for child care services.

§809.19. Assessing the Parent Share of Cost

Section 809.19 is amended to remove the provisions that are no longer effective as of December 1, 2023, and retains the sections that were previously adopted by the Commission with an effective date of December 1, 2023.

Specifically, the rules that became effective December 1, 2023, stated that the PSoC amount is established by TWC and determined on a sliding fee scale based on the family size and gross monthly income and represented by a percentage of the state median income, or SMI.

The rules effective December 1, 2023, removed the requirement that Board policy include the general criteria for determining affordability of the Board's PSoC, as the PSoC is no longer determined or established by the Board. The rules also removed the requirement that Boards have a definition of what constitutes frequent terminations and its process for assessing PSoC affordability.

Similarly, because the Board no longer determines the PSoC, the rules removed the requirement that Boards with frequent terminations for parent failure to pay the PSoC must reexamine their PSoC and adjust it to ensure the PSoC is not a barrier to assistance.

The rule amendments also remove the option for Boards to reduce the PSoC based on the parent selection of Texas Rising Star program providers. The intent of this reduction was to encourage parents to choose a Texas Rising Star program provider. However, because participation in the Texas Rising Star program is now a requirement for all Child Care Services (CCS) providers, this PSoC reduction is no longer necessary.

Additionally, the rule amendments include the requirement that the PSoC cannot exceed 7 percent of the family income, regardless of the number of children receiving child care services. The amended language complies with the recently amended CCDF regulations in CFR 45 §98.45(l). The US Department of Health and Human Services published the amended regulations in the *Federal Register* (89 FR 15366 - 15417) on March 1, 2024, with an effective date of April 30, 2024.

§809.20. Maximum Provider Reimbursement Rates

Section 809.20 is amended to rename the section "Maximum Provider Payment Rates" and remove "reimbursement" from the title and the section to align with §809.93 of this chapter, which requires that regulated child care providers be paid prospectively rather than as a reimbursement. This change aligns with the recently amended CCDF regulations in 45 CFR 45 §98.45(m), which requires states to pay providers in advance of or at the beginning of the delivery of child care services.

TWC notes that unregulated relative providers will continue to be paid as a reimbursement rather than prospectively. This is in accordance with the CCDF regulation language in 45 CFR 45 §98.45(m), which allows states to exclude certain types of providers from prospective payments if paying in advance is not a generally accepted practice for that provider type. TWC contends that there is no generally accepted practice of parents paying in advance for unregulated relatives caring for children related to them.

This section is also amended to remove the age groups used for payments that are no longer effective as of December 1, 2023, and retains the age groups that were previously adopted by the Commission with an effective date of December 1, 2023.

Specifically, the rules that became effective December 1, 2023, aligned the age groups for payment with the age groups defined by CCR as required by Texas Government Code §2308.315. The new age groups for payment are:

- Infants ages 0 through 11 months
- Infants ages 12 through 17 months
- Toddlers ages 18 through 23 months
- Toddlers age 2 years
- Preschool age 3 years
- Preschool age 4 years
- Preschool age 5 years
- School-age 6 years and older

§809.21. Determining the Amount of the Provider Reimbursement

Section 809.21 is amended to rename the section "Determining the Amount of the Provider Payment" and remove "reimbursement" from the title and the section to align with §809.93 of this chapter, which requires that child care providers be paid prospectively rather than as a reimbursement.

SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

TWC adopts the following amendments to Subchapter C:

§809.42. Eligibility Verification, Determination, and Redetermination

Section 809.42(b) is amended to remove the child care during job search exception for a redetermination no sooner than 12 months. This clarifies that the eligibility period for child care during job search is for 12 months. Boards must not conduct a full eligibility redetermination following the initial 3-month job search period described in §809.56. Boards must only verify that the parent is meeting the work requirements outlined in §809.56(c).

§809.51. Child Care during Temporary Interruptions in Work, Education, or Job Training

Section 809.51(a) is amended to remove the child care during job search exception for a redetermination no sooner than 12 months. This clarifies that the eligibility period for child care during job search is for 12 months. Similarly, the amended language also removes the 12-month redetermination exception during the 12-month eligibility period for children experiencing homelessness. Section 809.52 regarding child care for children experiencing homelessness states that the eligibility period is for 12 months; therefore, the exception for redetermination prior to the end of the 12-month eligibility period is not necessary for children experiencing homelessness.

§809.56. Child Care during Initial Job Search

Section 809.56(c) is amended to clarify that eligibility for child care during initial job search is for 12 months. The 12-month eligibility period consists of an initial 3-month job search period. The previous rule language stated that child care is limited to 3 months but shall continue for the remainder of a 12-month eligibility period if the parent meets work requirements before the end of the 3-month job search period. The amended language shifts

the emphasis of the eligibility period from a 3-month initial period within a 12-month period that is contingent upon work requirements to a full 12-month eligibility period, with a 3-month initial job search period. The continuation of child care for the remainder of the 12-month eligibility period will continue to be contingent upon the parent meeting work requirements in §809.56(c). TWC makes this change to demonstrate compliance more fully with 45 CFR §98.21(a)(2)(iii).

SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

TWC adopts the following amendments to Subchapter D:

§809.73. Parent Reporting Requirements

Section 809.73(a) is amended to remove the references to child care during initial job search as a separate eligibility period from the general 12-month eligibility period described in §809.41. This change clarifies that the eligibility period for child care during job search is for 12 months and is aligned with the general 12-month eligibility period for child care services.

SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

TWC adopts the following amendments to Subchapter E:

§809.92. Provider Responsibilities and Reporting Requirements

Section 809.92 is amended to change "reimbursement" to "payment" to align with §809.93, which requires that child care providers be paid prospectively rather than as a reimbursement.

A technical correction to the proposal was made to remove incorrect punctuation.

§809.93. Provider Reimbursement

Section 809.93 is amended to rename the section from "Provider Reimbursement" to "Provider Payment" and remove "reimbursement" from the section to align with the requirement that child care providers be paid prospectively rather than through reimbursement.

Section 809.93 is amended to remove the effective date of December 1, 2023, specific to §809.93(f) relating to the requirement that Boards pay regulated child care providers prospectively every two weeks based on the enrollment authorization.

§809.94. Providers Placed on Corrective or Adverse Action by Child Care Regulation

Section 809.94 is amended to remove "reimbursement" from the language to align with §809.93 requiring providers be paid prospectively rather than through reimbursement.

§809.96. Contracted Slots Agreements

Section 809.96 is amended to add children with disabilities as a priority population that can be served using contracted slots agreements. The amended language complies with the recently amended CCDF regulations in CFR 45 §98.30(b), which requires states to increase the use of grants or contracts for the delivery of child care services, including at a minimum for children in underserved areas (for example, in child care deserts), for infants and toddlers, and for children with disabilities.

TWC's current rules at §809.96(e)(1) already provides for contracted slots in child care deserts and underserved areas, and §809.96(e)(4) provides for contracted slots for infant and toddler child care.

SUBCHAPTER G. TEXAS RISING STAR PROGRAM

TWC adopts the following amendments to Subchapter G:

§809.130. Short Title and Purpose

Section 809.130(d)(4) is amended to state that the Texas Rising Star guidelines include a description of high and medium-high CCR deficiencies points thresholds required in §809.132 relating to CCR deficiencies that impact the certification status of a Texas Rising Star certified provider.

§809.131. Requirements for the Texas Rising Star Program

Section 809.131(a) is amended to clarify that this section applies to a child care provider's initial certification under the Texas Rising Star Program. Specifically, the requirement for a permanent (non-expiring) license or registration is a requirement for initial certification. A Texas Rising Star certified provider's certification will not be affected if the provider changes its operations that requires CCR to issue an initial license or registration such as changes in ownership or location coupled with changes in administrative or program staff and previous noncompliance with minimum standards.

Section 809.131(a)(2) is amended to include a required points threshold for high and medium-high CCR deficiencies for a provider to meet Texas Rising Star certification requirements. TWC makes this change to require initial certification to include a CCR deficiency points threshold similar to the requirement for an Entry Level Designation.

Section 809.131(a)(2) is also amended to reduce the Texas Rising Star review period of CCR licensing deficiencies from 12 months to 6 months. This change will support the review of a child care provider's most recent licensing deficiencies to more accurately describe the current status of quality of care being provided. This change also aligns with the current 6-month CCR deficiency history for probationary and suspension periods.

Section 809.131(b)(2) is amended to clarify the current practice that the points threshold for Entry Level Designation is described in the Texas Rising Star guidelines. Section 809.131(d)(2) is also amended to reduce the licensing deficiency period from 12 months to 6 months.

Section 809.131(e) is amended to clarify that beginning on the 18th month of Entry Level designation, the provider's licensing history will be reviewed and if it is determined that the provider will not be eligible by the end of the 24th month based on the most recent 6-month licensing history, the provider will not be able to receive referrals for new families. TWC has noted instances in which a provider would be eligible for certification following the 18th month but was not allowed to receive new referrals because of the current rule language. This rule change will allow a provider to receive new referrals if it is determined that the provider's licensing history will meet certification criteria by the end of the 24-month Entry Level period.

§809.132. Impacts on Texas Rising Star Certification

Section 809.132(a)(4) is amended to remove references to the number of high or medium-high CCR deficiencies that would place a Texas Rising Star certified provider on suspension status. The amended language states that a certified provider is placed on suspension status if the CCR deficiency points exceed the probationary status points threshold described in the Texas Rising Star guidelines.

Section 809.132(b) is amended to clarify that a provider placed on probation due to a "star level drop" will be reinstated at the provider's previous star level if CCR does not cite any additional

specified star-level drop deficiencies during the probationary period. The previous rule language in §809.132(e) did not specify that the additional deficiencies must be related to the deficiencies that placed the provider on probation due to a star level drop. TWC makes this change to clarify that the additional deficiencies are related to the star level drop probationary deficiencies.

Similarly, §809.132(c) is amended to clarify that providers on probationary status due to specified probationary deficiencies and subsequently placed on a second probationary period that also included a star level drop will be reinstated at the provider's previous star level if CCR does not cite any additional probationary deficiencies during the second probationary period. The previous rule language in §809.132(e) that established this requirement did not specify that the additional deficiencies must be related to the deficiencies that placed the provider on probation.

Section 809.132(d) is amended to remove the total number of high or medium-high deficiencies required to place a certified provider on a probationary period. The amended language adds that certified providers whose total points for high or medium-high deficiencies fall within the points threshold described in the Texas Rising Star guidelines will be placed on a six-month probationary period.

Additionally, as with §809.132(c), §809.132(d) is amended to clarify that providers on a second probationary period that also included a star level drop will be reinstated at the provider's previous star level if CCR does not cite any high or medium-high deficiencies during the second probationary period. The previous rule language in §809.132(e) that established this requirement did not specify that the additional deficiencies must be related to the deficiencies that placed the provider on probation.

Section 809.132(b) through (d) is amended to reduce the licensing deficiency period from 12 months to 6 months.

TWC also makes technical changes in §809.132(c) and (d) to align applicable language in these two subsections.

TWC removes the previous §809.132(e), which stated that providers not on suspension status with a star level drop shall be reinstated at the former star level if no citations in subsections (b) through (d) are cited within six months. As explained previously, this language did not specify which deficiencies would be applicable to reinstating the provider's star level; thus, TWC has amended subsections (b) through (d) to clarify the process for reinstating a star level based on the deficiencies specific to each level of probationary status.

Section 809.132 is also amended to change "reimbursement" to "payment" to align with §809.93, which requires that providers be paid prospectively and not as a reimbursement.

§809.133. Application and Assessments for Texas Rising Star Certification

Section 809.133 is amended to remove subsection (h), which requires Boards to be responsible for the tasks assigned to the Texas Rising Star assessor entity, within their respective local workforce development areas, until the assessor entity is procured and designated by TWC. TWC has designated an assessor entity and this provision is no longer applicable.

§809.134. Minimum Qualifications for Texas Rising Star Staff

Section 809.134(a) is amended to modify the background check requirement for Texas Rising Star staff. The intent of the amended language is to clarify that the background check does not need to be conducted using the same procedures and

criteria used by CCR to conduct background checks for child care providers and caregivers as required by Chapter 745 of the HHSC child care regulations, which requires a Federal Bureau of Investigation fingerprint check. The background checks required under Chapter 745 are designed for caregivers and individuals who have unsupervised contact with children in a child care facility. Texas Rising Star staff do not meet this standard and are not required to undergo this type of background check.

However, TWC continues to emphasize that Texas Rising Star staff should undergo a standard background check as part of the basic requirements for employment. The amended language requires the Board and the TWC's designated Texas Rising Star assessment entity to conduct a background check on each staff member prior to hiring and again every five years.

Section 809.134(d) is amended to clarify that TWC, rather than the three-member Commission, may grant the waiver regarding the minimum education requirements for Texas Rising Star mentors.

§809.136. Roles and Responsibilities of Texas Rising Star Staff

Section 809.136 is amended to remove the requirements for dual-role staff (that is, individuals who perform the functions of a Texas Rising Star mentor and assessor). With the separation of mentors as Board staff and assessors as staff of the designated assessment entity, the system will no longer have individuals performing dual roles, making these requirements unnecessary.

PART III. PUBLIC COMMENTS

The public comment period closed on June 17, 2024.

TWC received comments from Child Development Schools, Early Care & Education Consortium, and KinderCare Learning Companies.

COMMENT: Two commenters expressed their support for shortening the look-back period from 12 to six months and focusing disqualifying deficiencies on the most critical violations.

RESPONSE: The Commission appreciates the comments. No changes were made in response to these comments.

COMMENT: The commenters also addressed items that are typically part of Texas Rising Star guidelines. These topics include:

--Excluding any medium-high violation, especially if it is addressed at the point of infraction, to count towards their Texas Rising Star point total

--Increasing the point total when a CCS agreement is terminated

--Providing a "hold harmless" provision for all CCS agreements until the new rules become effective

--Enhancing and extending communication of Texas Rising Star status and updates

--Promoting closer alignment of Texas Rising Star with national accreditation program standards

RESPONSE: The Commission appreciates the comments. However, these Texas Rising Star topics are not addressed in TWC's Chapter 809 Child Care Services rules and are typically addressed in the Texas Rising Star guidelines. As such, these comments will be addressed during the current revisions of the Texas Rising Star guidelines. No changes were made in response to these comments.

COMMENT: The commenters recommended that TWC create a waiver and appeals process for certified providers when a provider's ability to serve CCS families is in jeopardy.

Two commenters suggested that during the appeals process TWC could establish a pre-probationary period that might allow existing CCS referrals to be maintained, but that a provider would be unable to accept new CCS referrals. This would allow providers time to remedy any issues, ensuring programs with the proper corrective action plans in place can continue to serve all children and avoid disruptions for families.

The two commenters also suggested that TWC create an extended waiver process for certified providers similar to the waiver process for entry-level providers. These waivers could be for lack of mentorship, child care deserts, underserved populations or communities, and for specific licensing considerations or point totals.

One commenter added that it would be beneficial to implement an efficient, real-time appeal and review process before a Texas Rising Star program is determined ineligible.

RESPONSE: Based on feedback from the Texas Rising Star Four-Year Review Workgroup, TWC is modifying the process for reviewing a Texas Rising Star-certified provider's CCR deficiencies from quarterly to real-time updates. TWC and TWC's Centralized Assessment Entity (the Children's Learning Institute) will access CCR's data daily and will immediately flag any certified provider whose deficiencies impact its Texas Rising Star certification status.

Regarding establishing a pre-probationary period, TWC's rule changes reduce the timeline that a child care program's licensing history will be reviewed from 12 months to six months. This change was proposed based on input from child care stakeholders. This proposed change allows a child care program to have its most recent licensing history reviewed and potentially be eligible for Texas Rising Star certification more quickly.

The Texas Rising Star program also allows for graduated impacts for certified programs, following a probationary period. This allows a certified program to remain at its certified star level despite having some CCR deficiencies before its star level is impacted from further noncompliance. If a certified child care program is unable to show continued compliance with CCR, it is ultimately placed in suspension status for up to 15 months. During this suspension status period, a child care program can be eligible for recertification if it can demonstrate six months of CCR licensing compliance.

Through these probationary periods and graduated impacts, TWC intends to allow child care programs the time to demonstrate compliance with CCR minimum standards before being determined ineligible to participate in the Child Care Services program.

Regarding appeals, TWC has an existing process for a provider that disagrees with the assessment score. Additionally, regarding licensing deficiencies, CCR has an appeals process for child care programs. TWC also notes that TWC and CLI do not impose any Texas Rising Star impacts for CCR deficiencies until CCR completes its appeals processes.

No changes were made in response to this comment.

COMMENT: One commenter suggested that staffing turnover at TWC is affecting the Texas Rising Star program. The commenter stated that staff consistency is needed for providing con-

sistent mentoring and guidance and implementing positive program changes.

RESPONSE:

TWC acknowledges the challenges that the current labor market has with staff retention. As with many child care programs that are facing staffing challenges, TWC and Boards also are trying to recruit and retain high-quality Texas Rising Star mentors.

TWC has created a Mentor Microcredential program, which is intended to support high-quality mentoring and coaching. Additionally, mentors are required to participate in Texas Rising Star- specific training, attend monthly mentor meetings, and follow statewide protocols.

No changes were made in response to this comment.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §809.2

STATUTORY AUTHORITY

The rule is adopted under:

--Texas Government Code §2308.3155(b), which provides TWC with the specific authority to adopt rules to administer the Texas Rising Star Program;

--Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rule relates to Title 4, Texas Labor Code, Chapter 302, and Title 10, Texas Government Code, Chapter 2308.

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 July 9, 2024.

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Les Trobman

General Counsel

Texas Workforce Commission

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SUBCHAPTER B. GENERAL MANAGEMENT

40 TAC §§809.18 - 809.21

The rules are adopted under:

--Texas Government Code §2308.3155(b), which provides TWC with the specific authority to adopt rules to administer the Texas Rising Star Program;

--Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general 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, Chapter 302, and Title 10, Texas Government Code, Chapter 2308.

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SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

40 TAC §§809.42, 809.51, 809.56

The rules are adopted under:

--Texas Government Code §2308.3155(b), which provides TWC with the specific authority to adopt rules to administer the Texas Rising Star Program;

--Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general 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, Chapter 302, and Title 10, Texas Government Code, Chapter 2308.

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SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

40 TAC §809.73

The rule is adopted under:

--Texas Government Code §2308.3155(b), which provides TWC with the specific authority to adopt rules to administer the Texas Rising Star Program;

--Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rule relates to Title 4, Texas Labor Code, Chapter 302, and Title 10, Texas Government Code, Chapter 2308.

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SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

40 TAC §§809.92 - 809.94, 809.96

The rules are adopted under:

--Texas Government Code §2308.3155(b), which provides TWC with the specific authority to adopt rules to administer the Texas Rising Star Program;

--Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general 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, Chapter 302, and Title 10, Texas Government Code, Chapter 2308.

§809.92. Provider Responsibilities and Reporting Requirements.

(a) A Board shall ensure that providers are given written notice of and agree to their responsibilities, reporting requirements, and requirements for payment under this subchapter prior to enrolling a child.

(b) Providers shall:

(1) be responsible for collecting the parent share of cost as assessed under §809.19 of this chapter before child care services are delivered;

(2) be responsible for collecting other child care funds received by the parent as described in §809.21 of this chapter;

(3) report to the Board or the Board's child care contractor instances in which the parent fails to pay the parent share of cost; and

(4) follow attendance reporting and tracking procedures required by the Commission under §809.95 of this chapter, the Board, or, if applicable, the Board's child care contractor.

(c) Providers shall not charge more than the Board's payment rate as determined under §809.21 of this chapter to parents:

(1) who are exempt from the parent share of cost assessment under §809.19 of this chapter;

(2) whose parent share of cost is calculated to be zero pursuant to §809.19 of this chapter; or

(3) parents in Child Care during Initial Job Search under §809.56 of this chapter during the initial three-month period.

(d) A Board may develop a policy that allows providers to charge parents more than the assessed parent share of cost in instances

where the provider's published rate exceeds the Board's payment rate (including the assessed parent share of cost) to all parents not included in subsection (c) of this section.

(e) For Boards that allow providers to charge additional amounts pursuant to subsection (d) of this section, the Board must ensure the provider reports to the Board each month:

(1) the specific families that were charged an additional amount above the assessed amount;

(2) the frequency with which each family was charged; and

(3) the amount of each additional charge.

(f) Boards that develop a policy under subsection (d) of this section must:

(1) provide the rationale for the Board's policy to allow providers to charge families additional amounts above the required co-payment, including a demonstration of how the policy promotes affordability and access for families; and

(2) describe the Board's analysis of the interaction between the additional amounts charged to families with the required parent share of cost and the ability of current payment rates to provide access to care without additional fees.

(g) Providers shall not deny a child care referral based on the parent's income status, receipt of public assistance, or the child's protective service status.

(h) Providers shall not charge fees to a parent receiving child care subsidies that are not charged to a parent who is not receiving subsidies.

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SUBCHAPTER G. TEXAS RISING STAR PROGRAM

40 TAC §§809.130 - 809.134, 809.136

The rules are adopted under:

--Texas Government Code §2308.3155(b), which provides TWC with the specific authority to adopt rules to administer the Texas Rising Star Program;

--Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general 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, Chapter 302, and Title 10, Texas Government Code, Chapter 2308.

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