

**Adopted Revisions to 19 TAC Chapter 89,  
Adaptations for Special Populations, Subchapter  
AA, Commissioner's Rules Concerning Special  
Education Services, Division 1, General  
Provisions, Division 2, Clarification of Provisions  
in Federal Regulations and State Law, and  
Division 7, Dispute Resolution**

Effective March 14, 2021

# “House Cleaning” Updates

- Language updates, such as changing Texas Youth Commission to Texas Juvenile Justice Department
- Cross-reference updates, such as for age ranges for student eligibility in §89.1035 and §89.1070
- Renumbering/Relettering needs from adding/removing sections, i.e. changing something previously found at (e) now at (f)
- Updating language to match the Individuals with Disabilities Education Act (IDEA), such as §89.1040, Eligibility Criteria. IDEA definition of a visual impairment, including blindness, means an impairment in, even with correction, that has an adverse impact on a child's ability to interact with curriculum and educational activities.
- Changes to Division 7, such as, allowing for due process hearings, mediation, and filing a complaint to be done electronically.
- Correcting mistakes or typos.

# §89.1005, Instructional Arrangements and Settings

This was added as a result of HB 3, 86th Texas Legislature, 2019. HB 3 renumbered TEC, §42.151, to §48.102 and amended it to transfer rulemaking authority related to instructional arrangements for students with disabilities from the State Board of Education (SBOE) to the commissioner of education. As a result, the language from 19 TAC §89.63 adopted under the SBOE's authority is adopted as new §89.1005. The adopted new rule is substantially similar to §89.63 and identifies provisions for instructional arrangements and settings, including mainstream, homebound, hospital class, speech therapy, resource room/services, self-contained (mild, moderate, or severe) regular campus, off-home campus, nonpublic day school, vocational adjustment class/program, residential care and treatment facility (not school district resident), and state-supported living center.

# §89.1011. Full Individual and Initial Evaluation

(a) Referral of students for a full individual and initial evaluation for possible special education services must be a part of the district's overall, general education referral or screening system.

Students [~~Prior to referral,~~ students] experiencing difficulty in the general classroom should be considered for all support services available to all students, such as tutorial; remedial; compensatory; response to evidence-based intervention; and other academic or behavior support services.

A student is not required to be provided with interventions for any specific length of time prior to a referral being made or a full individual and initial evaluation being conducted.

If the student continues to experience difficulty in the general classroom with [~~after~~] the provision of interventions, district personnel must refer the student for a full individual and initial evaluation.

A [~~This~~] referral for a full individual and initial evaluation 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.

(b)-(h) (No change.)

# §89.1070, Graduation Requirements

## What has **not** changed:

- The changes at 19 TAC §89.1070 do not change that some students may return or which students may return. The change breaks the information out over (b)(1), (b)(2), and (b)(3) instead of it all being lumped under (b)(1) and (b)(2).
- How and when written notice is required.

# §89.1070, Graduation Requirements

- (b)(1) has not changed: Students are required to demonstrate mastery of the required state standards and to pass 3 out of 5 end-of-course (EOC) exams. These students do not have a modified curriculum. Graduation is identical to that of their nondisabled peers
- (b)(2) students are required to demonstrate mastery of the required state standards, but who do not have to pass the required EOC exams, as determined by the Admission, Dismissal, and Review Committee (ARDC). These students do not have a modified curriculum.
- (b)(3) students with a modified curriculum

This rule does not make changes to graduation codes. Graduation codes are:

- (b)(1) = 34,
- (b)(2) = 35, and
- (b)(3) = 54/55/56/57.

## §89.1070, Graduation Requirements

If the student's ARD committee determined that the student is not required to pass the EOC assessments and therefore graduates under 19 TAC 89.1070(b)(2), please refer to **89.1070(j)** for available options until the student ages out of eligibility.

**19 TAC §89.1070(j)** reads, “For students who receive a diploma according to subsections (b)(2); (b)(3) (A), (B), or (C); or (f)(4)(A), (B), or (C) of this section, the ARD committee must determine needed educational services upon the request of the student or parent to resume services, as long as the student meets the age eligibility requirements.”

Regarding the summary of performance (SOP) evaluation requirement, required by 34 CFR §300.305(e), the evaluation must be provided to a student graduating under subsection (b)(2). TEA does anticipate clarifying this in rule.

Students graduating under (b)(1), (b)(2), and (b)(3) require prior written notice for a change of placement.

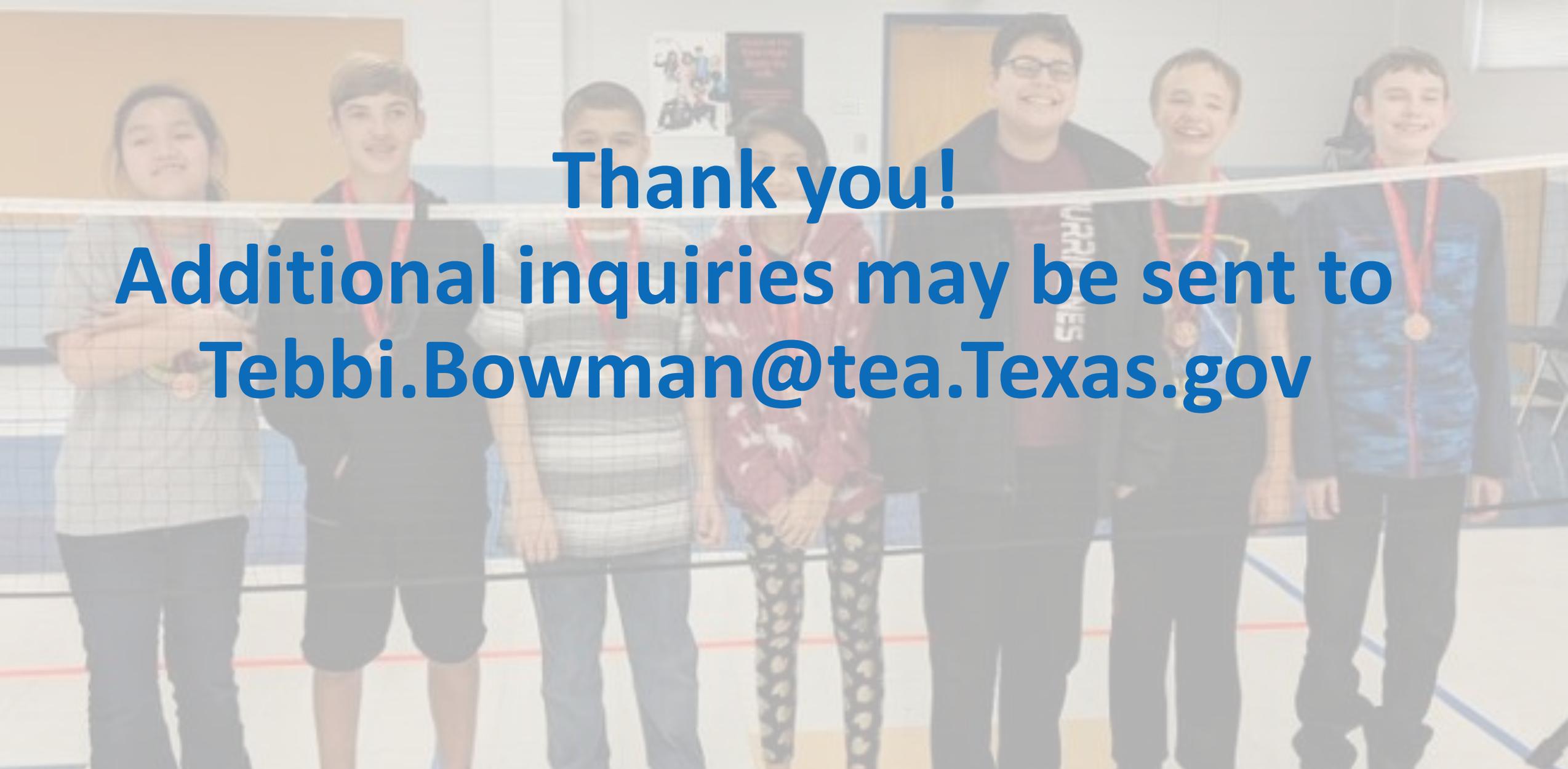
If a student has not completed his/her IEP and is receiving a certificate of attendance instead of a diploma, TEC §28.025(f) provides that the student is allowed to participate in a graduation ceremony with students receiving high school diplomas.

Why does (b) indicate “regular high school diploma,” when (b)(2) and (b)(3) are not “fully aligned” to the standards for all students?

Texas offers only one diploma, referred to as “regular high school diploma,” but Texas offers different paths for achieving it, as reflected in subparagraph (b).

What should ARD committees consider in recommending exit for (b)(2)? There are no conditions like we see with (b)(3)(A), (B), (C), and (D).

The decision is based on whether the IEP team believes the student needs to perform satisfactorily on all EOCs in order to graduate. The information used in making that decision will vary from student to student.



**Thank you!**

**Additional inquiries may be sent to  
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