

ATTACHMENT II
Text of Proposed Revisions to 19 TAC

Chapter 89. Adaptations for Special Populations

Subchapter AA. Commissioner's Rules Concerning Special Education Services

Division 2. Clarification of Provisions in Federal Regulations and State Law

§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. 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 [~~scientific, research-based~~] intervention; and other academic or behavior support services. If the student continues to experience difficulty in the general classroom after the provision of interventions, district personnel must refer the student for a full individual and initial evaluation. This referral for a full individual and initial evaluation may be initiated by school personnel, the student's parents or legal guardian, or another person involved in the education or care of the student.
- (b)-(h) (No change.)

§89.1040. Eligibility Criteria.

- (a)-(b) (No change.)
- (c) Eligibility definitions.
 - (1)-(8) (No change.)
 - (9) Learning disability.
 - (A) (No change.)
 - (B) A student with a learning disability is one who:
 - (i) (No change.)
 - (ii) does not achieve adequately for the student's age or meet state-approved grade-level standards in oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, or mathematics problem solving when provided appropriate instruction, as indicated by performance on multiple measures such as in-class tests; grade average over time (e.g. six weeks, semester); norm- or criterion-referenced tests; statewide assessments; or a process based on the student's response to evidence-based [~~scientific, research-based~~] intervention; and
 - (I) does not make sufficient progress when provided a process based on the student's response to evidence-based [~~scientific, research-based~~] intervention (as defined in 20 USC, §7801(21) [~~§7801(37)~~]), as indicated by the student's performance relative to the performance of the student's peers on repeated, curriculum-based assessments of achievement at reasonable intervals, reflecting student progress during classroom instruction; or
 - (II) (No change.)
 - (10)-(13) (No change.)

§89.1047. Procedures for Surrogate and Foster Parents.

~~[(a) — An individual assigned to act as a surrogate parent for a student with a disability, in accordance with 34 Code of Federal Regulations (CFR), §300.519, relating to surrogate parents, must comply with the requirements specified in Texas Education Code (TEC), §29.001(10).]~~

~~[(1) — Pursuant to TEC, §29.001(10)(A), an individual assigned to act as a surrogate parent must complete a training program in which the individual is provided with an explanation of the provisions of federal and state laws, rules, and regulations relating to:]~~

~~[(A) — the identification of a student with a disability;]~~

~~[(B) — the collection of evaluation and re-evaluation data relating to a student with a disability;]~~

~~[(C) — the admission, review, and dismissal (ARD) committee process;]~~

~~[(D) — the development of an individualized education program (IEP), including the consideration of transition services for a student who is at least 16 years of age;]~~

~~[(E) — the determination of least restrictive environment;]~~

~~[(F) — the implementation of an IEP;]~~

~~[(G) — the procedural rights and safeguards available under 34 CFR, §§300.148, 300.151-300.153, 300.229, 300.300, 300.500-300.520, 300.530-300.537, and 300.610-300.627, relating to the issues described in 34 CFR, §300.504(e); and]~~

~~[(H) — the sources that the surrogate parent may contact to obtain assistance in understanding the provisions of federal and state laws, rules, and regulations relating to students with disabilities.]~~

~~[(2) — The training program described in subsection (a)(1) of this section must be provided in the native language or other mode of communication used by the individual who is to serve as a surrogate parent.]~~

~~[(3) — The individual assigned to act as a surrogate parent must complete the training program described in subsection (a)(1) of this section within 90 calendar days after the date of initial assignment as a surrogate parent. Once an individual has completed a training program conducted or provided by or through the Texas Department of Family and Protective Services (TDFPS), a school district, an education service center, or any entity that receives federal funds to provide Individuals with Disabilities Education Act (IDEA) training to parents, the individual shall not be required by any school district to complete additional training in order to continue serving as the student's surrogate parent or to serve as the surrogate parent for other students with disabilities. School districts may provide ongoing or additional training to surrogate parents and/or parents; however, a district cannot deny an individual who has received the training as described in subsection (a)(1) of this section from serving as a surrogate parent on the grounds that the individual has not been trained.]~~

~~[(4) — A school district should provide or arrange for the provision of the training program described in subsection (a)(1) of this section prior to assigning an individual to act as a surrogate parent but no later than 90 calendar days after assignment.]~~

~~[(b) — A foster parent may act as a parent of a child with a disability, in accordance with 34 CFR, §300.30, relating to the definition of parent, if he/she complies with the requirements of TEC, §29.015(b), relating to foster parents, including the completion of the training program described in subsection (a)(1) of this section.]~~

~~[(1) — The foster parent must complete the training program described in subsection (a)(1) of this section within 90 calendar days after the date of initial assignment as the parent. Once a foster parent has completed a training program conducted or provided by the TDFPS, a school district, an education service center, or any entity that receives federal funds to provide IDEA training to parents, the foster parent shall not be required by any school district to complete additional training in order to continue serving as his/her child's surrogate parent or parent or to serve as the surrogate parent or parent for other students with disabilities. School districts may provide ongoing or additional~~

training to foster parents and/or parents; however, a district cannot deny an individual who has received the training as described in subsection (a)(1) of this section from serving as the parent on the grounds that the individual has not been trained.]

[(2) A school district should provide or arrange for the provision of the training program described in subsection (a)(1) of this section prior to assigning a foster parent to act as a parent but no later than 90 calendar days after assignment.]

[(c) Each school district or shared services arrangement shall develop and implement procedures for conducting an analysis of whether a foster parent or potential surrogate parent has an interest that conflicts with the interests of his/her child. A foster parent in a home which is verified by the TDFPS or a child placing agency shall not be deemed to have a financial conflict of interest by virtue of serving as the foster parent in that home. These homes include, but are not limited to, basic, habilitative, primary medical, or therapeutic foster or foster group homes. In addition, issues concerning quality of care of the child do not constitute a conflict of interest. Concerns regarding quality of care of the child should be communicated, and may be statutorily required to be reported, to TDFPS.]

[(d) If a school district denies a foster parent the right to serve as a surrogate parent or parent, the school district must provide the foster parent with written notice of such denial within seven calendar days after the date on which the decision is made. The written notice shall:]

[(1) specify the reason(s) the foster parent is being denied the right to serve as the surrogate parent or parent (the notice must specifically explain the interests of the foster parent that conflict with the interests of his/her child); and]

[(2) inform the foster parent of his/her right to file a complaint with the Texas Education Agency in accordance with 34 CFR, §§300.151-300.153, relating to complaint procedures.]

§89.1047. Procedures for Special Education Decision-Making for Students in Foster Care.

(a) A foster parent may act as a parent of a child with a disability, in accordance with 34 Code of Federal Regulations (CFR), §300.30, relating to the definition of parent, if requirements of Texas Education Code (TEC), §29.015(a), are met, including the completion of the training program described in subsection (c)(1) of this section.

(1) For a foster parent to serve as a student's parent, a school district must ensure that the foster parent has received training described in subsection (c)(1) of this section. The foster parent must complete the training program before the student's next scheduled admission, review, and dismissal (ARD) committee meeting, but not later than the 90th day after the foster parent begins acting as the parent for the purpose of making special education decisions.

(2) The training program can be conducted or provided by the Texas Department of Family and Protective Services (TDFPS), a school district, an education service center, or any entity that receives federal funds to provide Individuals with Disabilities Education Act (IDEA) training to parents. Once an individual has completed the training, the individual may not be required by any school district to complete additional training in order to serve as the parent or the surrogate parent for the student or other students with disabilities who are in foster care. School districts may provide optional ongoing or supplemental training.

(b) If a school district denies a foster parent the right to serve as a parent, the school district must provide the foster parent with written notice of such denial within seven calendar days after the date on which the decision is made. The written notice must:

(1) specifically explain why the foster parent is being denied the right to serve as the student's parent; and

(2) inform the foster parent of his or her right to file a complaint with the Texas Education Agency in accordance with 34 CFR, §§300.151-300.153, relating to special education complaint procedures.

(c) Except as provided by Texas Family Code, §263.0025, which authorizes a court to appoint a surrogate parent, if a district cannot locate or identify a parent, if the foster parent is unwilling or unable to serve as a parent, or if the student does not reside in a foster home setting, the school district must assign a surrogate parent to make special education decisions on behalf of the student. An individual assigned by a school

district to act as a surrogate parent for a student with a disability, in accordance with 34 CFR, §300.519, and TEC, §29.0151, relating to surrogate parents, must comply with the requirements specified in TEC, §29.001(10).

- (1) Pursuant to TEC, §29.001(10)(A), a foster parent serving as a parent or an individual assigned by a school district to act as a surrogate parent must complete a training program in which the individual is provided with an explanation of the provisions of federal and state laws, rules, and regulations relating to:
 - (A) the identification of a student with a disability;
 - (B) the collection of evaluation and re-evaluation data relating to a student with a disability;
 - (C) the ARD committee process;
 - (D) the development of an individualized education program (IEP), including the consideration of transition services for a student who is at least 14 years of age;
 - (E) the determination of least restrictive environment;
 - (F) the implementation of an IEP;
 - (G) the procedural rights and safeguards available under 34 CFR, §§300.148, 300.151-300.153, 300.229, 300.300, 300.500-300.520, 300.530-300.537, and 300.610-300.627, relating to the issues described in 34 CFR, §300.504(c); and
 - (H) where to obtain assistance in understanding the provisions of federal and state laws, rules, and regulations relating to students with disabilities.
- (2) The training program described in subsection (c)(1) of this section must be provided in the native language or other mode of communication used by the individual being trained.
- (3) To serve as a student's surrogate parent, a school district must ensure that the surrogate parent has received training described in subsection (c)(1) of this section. The individual assigned by a school district to act as a surrogate parent must complete the training program before the student's next scheduled ARD committee meeting but not later than the 90th day after the date of initial assignment as a surrogate parent.
- (4) The training program can be conducted or provided by the TDFPS, a school district, an education service center, or any entity that receives federal funds to provide IDEA training to parents. Once an individual has completed the training, the individual may not be required by any school district to complete additional training in order to serve as the surrogate parent or the parent for the student or other students with disabilities who are in foster care. School districts may provide optional ongoing or supplemental training.
- (d) Each school district or shared services arrangement must develop and implement procedures for conducting an analysis of whether a potential surrogate parent has an interest that conflicts with the interests of his or her child. Issues concerning quality of care of the child do not constitute a conflict of interest. Concerns regarding quality of care of the child should be communicated, and may be statutorily required to be reported, to TDFPS.
- (e) If a court appoints a surrogate parent for a child with a disability under Texas Family Code, §263.0025, and the school district determines that the surrogate parent is failing to perform or is not properly performing the duties listed under TEC, §29.0151(d), the district must consult with TDFPS and appoint another person to serve as the surrogate parent for the child.

§89.1049. Parental Rights Regarding Adult Students.

- (a) In accordance with 34 Code of Federal Regulations (CFR), §300.320(c) and §300.520, and Texas Education Code (TEC), §29.017, beginning at least one year before a student reaches 18 years of age, the student's individualized education program (IEP) must include a statement that the student has been informed that, unless the student's parent or other individual has been granted guardianship of the student under the Probate Code, Chapter XIII, Guardianship, all rights granted to the parent under the Individuals with Disabilities Education Act (IDEA), Part B, other than the right to receive any notice required under

IDEA, Part B, will transfer to the student upon reaching age 18. Beginning with the 2018-2019 school year, the IEP must also state that the student has been provided information and resources regarding guardianship, alternatives to guardianship, including a supported decision-making agreement under Texas Estates Code, Chapter 1357, and other supports and services that may enable the student to live independently. After the student reaches the age of 18, except as provided by subsection (b) of this section, the school district shall provide any notice required under IDEA, Part B, to both the adult student and the parent.

- (b) In accordance with 34 CFR, §300.520(a)(2), and TEC, §29.017(a), all rights accorded to a parent under IDEA, Part B, including the right to receive any notice required by IDEA, Part B, will transfer to an 18-year-old student who is incarcerated in an adult or juvenile [] state or local correctional institution, unless the student's parent or other individual has been granted guardianship of the student under Texas Estates Code, Title 3 [the Probate Code, Chapter XIII, Guardianship] .
- (c) In accordance with 34 CFR, §300.520(a)(3), a school district must notify in writing the adult student and parent of the transfer of parental rights, as described in subsections (a) and (b) of this section, at the time the student reaches the age of 18. This notification is separate and distinct from the requirement that the student's IEP include a statement relating to the transfer of parental rights beginning at least one year before the student reaches the age of 18. This notification is not required to contain the elements of notice referenced in 34 CFR, §300.503, but must include a statement that parental rights have transferred to the adult student . Beginning with the 2018-2019 school year, the notice must also include information and resources regarding guardianship, alternatives to guardianship, including a supported decision-making agreement under Texas Estates Code, Chapter 1357, and other supports and services that may enable the student to live independently, and must provide contact information for the parties to use in obtaining additional information.
- (d) A notice under IDEA, Part B, which is required to be given to an adult student and parent does not create a right for the parent to consent to or participate in the proposal or refusal to which the notice relates. For example, a notice of an admission, review, and dismissal (ARD) committee meeting does not constitute invitation to, or create a right for, the parent to attend the meeting. However, in accordance with 34 CFR, §300.321(a)(6), the adult student or the school district may invite individuals who have knowledge or special expertise regarding the student, including the parent.
- (e) Nothing in this section prohibits a supported decision-making agreement or a valid power of attorney from being executed by an individual who holds rights under IDEA, Part B.

§89.1055. Content of the Individualized Education Program.

- (a)-(h) (No change.)
- (i) Subsection (h) of this section expires with the beginning of the 2018-2019 school year.
- (j) Beginning with the 2018-2019 school year, not later than when a student reaches 14 years of age, the ARD committee must consider and, if appropriate, address the following issues in the IEP:
 - (1) appropriate student involvement in the student's transition to life outside the public school system;
 - (2) if the student is younger than 18 years of age, appropriate involvement in the student's transition by the student's parents and other persons invited to participate by:
 - (A) the student's parents; or
 - (B) the school district in which the student is enrolled;
 - (3) if the student is at least 18 years of age, involvement in the student's transition and future by the student's parents and other persons, if the parent or other person:
 - (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;

- (4) appropriate postsecondary education options, including preparation for postsecondary-level coursework;
- (5) an appropriate functional vocational evaluation;
- (6) appropriate employment goals and objectives;
- (7) if the student is at least 18 years of age, the availability of age-appropriate instructional environments, including community settings or environments that prepare the student for postsecondary education or training, competitive integrated employment, or independent living, in coordination with the student's transition goals and objectives;
- (8) appropriate independent living goals and objectives;
- (9) appropriate circumstances for facilitating a referral of a student or the student's parents to a governmental agency for services or public benefits, including a referral to a governmental agency to place the student on a 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
- (10) 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.
- (k) Beginning with the 2018-2019 school year, a student's ARD committee shall annually review the issues described in subsection (j) of this section and, if necessary, update the portions of the student's IEP that address those issues.
- (l) In accordance with 34 CFR, §300.320(b), beginning not later than the first IEP to be in effect when the student turns 16 years of age, or younger if determined appropriate by the ARD committee, and updated annually thereafter, the IEP must include the following:
 - (1) appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
 - (2) the transition services, including courses of study, needed to assist the student in reaching the postsecondary goals developed under paragraph (1) of this subsection.
- ~~(i) In accordance with 34 CFR, §300.320(b), beginning not later than the first IEP to be in effect when the student turns 16 years of age, or younger if determined appropriate by the ARD committee, and updated annually thereafter, the IEP must include the following:~~
 - ~~(1) appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and~~
 - ~~(2) the transition services, including courses of study, needed to assist the student in reaching the postsecondary goals developed under paragraph (1) of this subsection.~~
- (m) ~~(j)~~ The written statement of the IEP must document the decisions of the ARD committee with respect to issues discussed at each ARD committee meeting. The written statement must also include:
 - (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.

§89.1070. Graduation Requirements.

- (a)-(c) (No change.)

- (d) Notwithstanding subsection (c)(3) of this section, a student receiving special education services classified in Grade 11 or 12 [~~during the 2014-2015, 2015-2016, or 2016-2017 school year~~] who has taken each of the state assessments required by Chapter 101, Subchapter CC, of this title (relating to Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program) or Subchapter DD of this title (relating to Commissioner's Rules Concerning Substitute Assessments for Graduation) but failed to achieve satisfactory performance on no more than two of the assessments is eligible to receive an endorsement if the student has met the requirements in subsection (c)(1) and (2) of this section.
- (e) (No change.)
- (f) A student receiving special education services who entered Grade 9 before the 2014-2015 school year may graduate and be awarded a high school diploma under the Foundation High School Program as provided in §74.1021 of this title (relating to Transition to the Foundation High School Program), if the student's ARD committee determines that the student should take courses under that program and the student satisfies the requirements of that program. Subsections (c) and (d) of this section apply to a student transitioning to the Foundation High School Program under this subsection. As the TEC, §28.0258 and §39.025(a-2), modify the state assessment requirements applicable to students in general education, a student receiving special education services who is classified in Grade 11 or 12 [~~during the 2014-2015, 2015-2016, or 2016-2017 school year~~] who has taken each of the state assessments required by Chapter 101, Subchapter CC, of this title (relating to Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program) or Subchapter DD of this title (relating to Commissioner's Rules Concerning Substitute Assessments for Graduation) but failed to achieve satisfactory performance on no more than two of the assessments may graduate if the student has satisfied all other applicable graduation requirements.
- (g) A student receiving special education services who entered Grade 9 before the 2014-2015 school year may graduate and be awarded a regular high school diploma if the student meets one of the following conditions.
- (1) (No change.)
- (2) Notwithstanding paragraph (1) of this subsection, as the TEC, §28.0258 and §39.025(a-2), modify the state assessment requirements applicable to students in general education, a student receiving special education services who is classified in Grade 11 or 12 [~~during the 2014-2015, 2015-2016, or 2016-2017 school year~~] may graduate under the recommended or distinguished achievement high school program, as applicable, if the student has taken each of the state assessments required by Chapter 101, Subchapter CC, of this title (relating to Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program) or Subchapter DD of this title (relating to Commissioner's Rules Concerning Substitute Assessments for Graduation) but failed to achieve satisfactory performance on no more than two of the assessments and has met all other applicable graduation requirements in paragraph (1) of this subsection.
- (3)-(4) (No change.)
- (h)-(l) (No change.)

§89.1075. General Program Requirements and Local District Procedures.

- (a) Each school district must maintain an eligibility folder for each student receiving special education services, in addition to the student's cumulative record. The eligibility folder must include, but need not be limited to: copies of referral data; documentation of notices and consents; evaluation reports and supporting data; admission, review, and dismissal (ARD) committee reports; and the student's individualized education programs (IEPs).
- (b) For school districts providing special education services to students with visual impairments, there must be written procedures as required in the Texas Education Code (TEC), §30.002(c)(10).
- (c) Each school district must ensure that each teacher who provides instruction to a student with disabilities:
- (1) has access to relevant sections of the student's current IEP;
- (2) is informed of the teacher's specific responsibilities related to implementation of the IEP, such as goals and objectives, and of needed accommodations, modifications, and supports for the student; and

- (3) has an opportunity to request assistance regarding implementation of the student's IEP.
- (d) Each school district must develop a process to be used by a teacher who instructs a student with a disability in a regular classroom setting :
 - (1) to request a review of the student's IEP;
 - (2) to provide input in the development of the student's IEP;
 - (3) [~~2~~] that provides for a timely district response to the teacher's request; and
 - (4) [~~3~~] that provides for notification to the student's parent or legal guardian of that response.
- (e) Students with disabilities must have available an instructional day commensurate with that of students without disabilities. The ARD committee must determine the appropriate instructional setting and length of day for each student, and these must be specified in the student's IEP.
- (f) School districts that jointly operate their special education programs as a shared services arrangement, in accordance with TEC, §29.007, must do so in accordance with procedures developed by the Texas Education Agency (TEA).
- (g) School districts that contract for services from non-public day schools must do so in accordance with 34 Code of Federal Regulations, §300.147, and procedures developed by the TEA.