Adopted Changes to the Texas Administrative Code

Effective January 1, 2015

Font appearing in red shows the changes between the proposed rule and the adopted rule.
19 TAC §89.63

• 19 TAC §89.63(c)(1) Mainstream instructional setting
  – Added “positive classroom behavioral interventions and supports” (line 27)
• 19 TAC §89.63(c)(2) Homebound instructional setting
  – No changes (Note: proposed changes were not approved by the SBOE – lines 33-45)
• 19 TAC §89.63(c)(7) Off-home campus instructional setting
  – Added a hyphen to “off-home” (line 73)
  – Added “but not limited to” (line 74)
  – Added new, clarifying language to subsection (7)(B) (lines 80-88)*
• 19 TAC §89.63(c)(9) Vocational adjustment instructional setting
  – Based on public comment, the rule was changed to include “paid or unpaid unless otherwise prohibited by law.” (lines 95-96)
  – Changed “plan” to “goals” and changed “technology” to “technical education” (lines 99-100)

* See next slide
19 TAC §89.63(c)(7)(B)

- Added “community setting (not operated by a school district) that prepares the student for postsecondary education/training, integrated employment, and/or independent living in coordination with the student’s individual transition goals and objectives, including a student with regularly scheduled instruction or direct involvement provided by school district personnel, or a student in a facility not operated by a school district (other than a nonpublic day school) with instruction provided by school district personnel.”

- Note: bold font indicates new language, and italics indicate rephrasing of previous language.
19 TAC §89.1040 (page 2)

• 19 TAC §89.1040 Eligibility Criteria
  – Changed “shall” to “must” (lines 78, 89, 114, 119, and 146)

• 19 TAC §89.1040(c)(3) Auditory impairment
  – Changed “otologist” to “otolaryngologist” (lines 111-112)
  – Clarified language related to audiological evaluation to ensure that districts understand that otological and audiological evaluations are both required (lines 113-114)

• 19 TAC §89.1040(c)(5) Intellectual disability
  – Changed “mental retardation” to “intellectual disability” (lines 121-124, and 258)

• 19 TAC §89.1040(c)(9) Learning disability
  – Changed “child” to “student” (lines 161-162, 164, 179, 186, 188, 189, and 190)
• 19 TAC §89.1040(c)(12)(A)(ii)(I)
  – Based on public comment, the rule was amended at adoption to remove language referring to a “professional” and “orientation and mobility instructor” and to use language referring to a certified “teacher” and certified orientation and mobility “specialist.” (lines 224-227)
  – Based on public comment, the rule was amended at adoption to remove the requirement regarding a recommendation for an O&M evaluation as part of the functional vision evaluation. (line 231 [and an orientation and mobility evaluation])
• 19 TAC §89.1040(c)(12)(B)
  – Based on public comment, the rule was amended at adoption to remove the capitalized reference to “braille.” (line 238)
• Added subsections (C), (D), and (E) to reflect statutory language from TEC §§30.002(c-1) and (c-2) (lines 241-256)
19 TAC §89.1070
(page 17)

- 19 TAC §89.1070 Graduation Requirements Subsection (a)
  - A technical correction was made to §89.1070(a) at adoption to provide applicable cross references relating to graduation options: (b)(2)(D), (f)(1), and (f)(2) (lines 766-767)
  - Removed references to IDEA (lines 769-771)
    - Subsections (b), (c), (d), and (e)
      - These subsections were added to align with the new Foundation School Program (FSP).
      - Subsection (b)(1) refers to students that master state/district standards and meet credit requirements.
      - Subsection (b)(2) refers to students who require additional work-related goals as part of the IEP.
19 TAC §89.1070

• 19 TAC §89.1070 Graduation Requirements (continued)
  – Subsections (b), (c), (d), and (e) (continued)
    • Subsection (c) refers to endorsements and requires students to complete courses required for the endorsement without modifications (c)(2) and further requires students to pass required state assessments (c)(3).
    • Subsection (d) requires courses that can count for both graduation credit and endorsements to be completed without modifications.
    • Subsection (e) applies to students who entered Grade 9 before the 2014-2015 school year who wish to graduate under the FSP when recommended by the ARD committee.
  – Subsection (f)
    • Replaces the previous subsection (b) and applies to students who entered Grade 9 before the 2014-2015 school year (lines 823-864).
    • Changes “satisfactorily completed” to “demonstrated mastery” and changes references to previous and current rule (lines 825, 835, and 843).
    • Strikes the phrase “consistent with the IEP” from the stem and adds the phrase “consistent with the IEP” to subsections (f)(3)(A) and (f)(3)(B)(line 853).
19 TAC §89.1070

• 19 TAC §89.1070 Graduation Requirements (continued)
  – Subsections (g-j) replace previous subsections (c-f) (lines 867-883).
  – Subsections (g and j) also replace “shall” with “must” (lines 871 and 881).
  – Other changes in subsections (g-j) reference changes to clarify requirements.
  – Subsection (k) was added to clarify the meaning of modified curriculum and modified content and to clarify that course substitutions authorized in statute are not to be considered modified courses unless the content is modified.
Subsections (b),(c), (e), and (g) reflect requirements of and/or provide clarification for §29.004, related to timelines for initial evaluations.

Subsection (d) continues the requirement to hold an IEP team meeting within 30 calendar days from the date the initial evaluation is completed unless the 30th day falls during the summer, in which case the meeting must occur by the first day of classes in the fall unless the evaluation report shows a need for ESY during the summer.

Based on public comment, Subsection (e) was amended at adoption to read, “If an initial evaluation completed not later than June 30 indicates that the student will need extended school year services during that summer, the ARD committee must meet as expeditiously as possible.”
19 TAC §89.1011 (continued)

• Subsection (f) incorporates requirements from 34 CFR §300.301 related to the initial evaluation of a transfer student.
• Subsection (h) defines “absence” as used in §29.004 and §89.1011.
§89.1050 The Admission, Review, and Dismissal Committee (page 6)

- Subsection (c) incorporates requirements found in other regulatory and statutory provisions related to IEP team membership.
- Based on public comment, Subsection (d) was amended at adoption to read, “Additionally, a school district must allow parents who attend an ARD committee meeting to participate in the meeting through other methods such as through telephone calls or video conferencing.” No other changes were made to §89.1050 at adoption.
- Subsection (e) clarifies how LEAs must respond to parents’ written request for an IEP team meeting. Please note the five-school-day timeline for response if the LEA is refusing to convene the IEP team meeting.
- Subsection (f) allows IEP teams to reconvene later than 10 school days if the parents and the LEA agree. Please note that the time and place of the reconvene meeting do not have to be determined prior to the conclusion of the IEP team meeting that ended in disagreement.
- Subsection (g) clarifies that LEAs must provide prior written notice under 34 CFR §300.503 at least five school days (unless the parent agrees otherwise) before the LEA proposes or refuses an action.
Subsection (h) clarifies that, 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.
§89.1050 The Admission, Review, and Dismissal Committee (continued)

- Subsection (i) clarifies LEAs’ obligations when a student transfers during the school year.
- Subsection (j) clarify LEAs’ obligations related to student discipline.
§89.1050 The Admission, Review, and Dismissal Committee (continued)

• Please note:
  – IEP team members are no longer required to sign the IEP team meeting report.
  – IEP team members are no longer required to indicate individual agreement or disagreement with the IEP.
  – If the IEP team members cannot reach agreement on the IEP, then a written statement for the basis of the disagreement must still be included in the IEP.
  – The parent or adult student who disagrees with the IEP must still be given the opportunity to write his/her own statement.
§89.1053 Procedures Related to Restraint and Time Out (page 11)

• Rule was adopted as proposed.
• Subsections (l) and (m) clarify training and reporting requirements related to restraints conducted by peace officers.
§89.1055 Content of the Individualized Education Program (page 13)

• Rule was adopted as proposed.
• Subsection (g) clarifies that a student’s behavior improvement plan or behavioral intervention plan is a part of his/her IEP.
• Subsection (h) clarifies state requirements for transition beginning no later than when a student turns 14 years of age.
• Subsection (i) clarifies federal requirements for transition beginning no later than when a student turns 16 years of age.
§89.1065 Extended School Year Services (page 16)

- Rule was adopted as proposed.
- Subsection (2) allows IEP teams to review documentation related to the student’s current IEP goals during the regression analysis as opposed to limiting the analysis only to the objectives found in the student’s current IEP.
§89.1075 General Program Requirements and Local District Procedures (page 19)

- Rule was adopted as proposed.
- Subsection (c) clarifies that teachers must have access to their students’ IEPs and must be informed of their specific responsibilities related to the implementation of each student’s IEP. Please note that LEAs are no longer required to give teachers a hard copy of their students’ IEPs.
- Subsection (d) clarifies that LEAs must have a process for teachers to use to request a review of a student’s IEP. The process must address how the LEA will respond to the request and must address how the LEA will notify the student’s parent of the LEA’s response to the request.
§89.1076 Interventions and Sanctions (page 20)

§89.1121 Distribution of State Funds (page 21)

§89.1131 Qualifications of Special Education, Related Service, and Paraprofessional Personnel (page 22)

• Rules were adopted as proposed.
• Only technical edits were made.
§89.1150 General Provisions (page 23)

• Rule was adopted as proposed.
• Subsections (b)(1) and (b)(4) clarify that FIEP meetings are another option for dispute resolution.
§89.1195 Special Education Complaint Resolution (page 23)

• Rule was adopted as proposed.
• Minor technical edits were made.
• Subsection (f) clarifies that requests for a reconsideration of a special education complaint investigation must be signed and must be submitted to TEA by mail, hand-delivery, or facsimile.
§89.1196 Individualized Education Program Facilitation (page 26)

• Subsections (a) – (f) clarify requirements for LEAs that choose to offer facilitated IEP team meetings under the rule. These subsections did not change from what was proposed.

• Based on public comment, Subsection (g) was changed at adoption to clarify that a facilitator’s duties include:
  – (g)(4) ensuring that each committee meeting has an opportunity to participate [speak and be heard]
  – (g)(6) helping to keep the ARD committee on task so that the meeting purposes can be accomplished [and] within the time allotted for the meeting.
§89.1197 State Individualized Education Program Facilitation (page 28)

• Rule establishes requirements for the state’s program, facilitator qualifications, and for how to request FIEP team meetings through the state.

• Based on public comment, Subsection (e) was changed at adoption.
  – (e)(2) The dispute must related to an ARD committee meeting in which mutual agreement about one or more of [all] the required elements of the IEP. . . .
§89.1197 State Individualized Education Program Facilitation (continued)

• Based on public comment, Subsection (m) was changed at adoption to clarify that a facilitator’s duties include:
  – (m)(4) ensuring that each committee meeting has an opportunity to participate [speak and be heard] and
  – (m)(6) helping to keep the ARD committee on task so that the meeting purposes can be accomplished [and] within the time allotted for the meeting.