ATTACHMENT II
Text of Adopted 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


(a) Referral of students for a full [and] individual and initial evaluation for possible special education services must [shall] 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 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 [and] individual and initial evaluation. This referral for a full [and] 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) If a parent submits a written request to a school district's director of special education services or to a district administrative employee for a full individual and initial evaluation 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; 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, and a copy of the procedural safeguards notice required by 34 CFR, §300.504.

(c) Except as otherwise provided in this section, a written report of a full individual and initial evaluation 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.

(d) 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 full individual and initial evaluation report. If the 30th day falls during the summer and school is not in session, the student’s ARD committee has until the first day of classes in the fall to finalize decisions concerning the student’s initial eligibility determination, IEP, and placement, unless the full individual and initial evaluation indicates that the student will need extended school year services during that summer.

(e) Notwithstanding the timelines in subsections (c) and (d) of this section, if the school district received the written consent for the evaluation from the student’s parent at least 35 but less than 45 school days before the last instructional day of the school year, the written report of a full individual and initial evaluation of a student must be provided to the student’s parent not later than June 30 of that year. The student’s ARD committee must meet not later than the 15th school day of the following school year to consider the evaluation. If, however, the student was absent from school three or more days between the time that the
school district received written consent and the last instructional day of the school year, the timeline in
subsection (c)(1) of this section applies to the date the written report of the full individual and initial
evaluation is required. 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.

(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 full individual and initial
evaluation, 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 (c) and (e) 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) For purposes of subsections (b), (c), and (e) 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.

(h) For purposes of subsections (c)(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 at the alternate attendance
taking time set for that student. A student is considered in attendance if the student is off campus
participating in an activity that is approved by the school board and is under the direction of a professional
staff member of the school district, or an adjunct staff member who has a minimum of a bachelor's degree
and is eligible for participation in the Teacher Retirement System of Texas.

§89.1015. Time Line for All Notices.

[“Reasonable time” required for the written notice to parents under 34 Code of Federal Regulations (CFR),
§300.503, is defined as at least five school days, unless the parents agree otherwise.]

§89.1040. Eligibility Criteria.

(a) Special education services. To be eligible to receive special education 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), §29.003, and this section. The provisions in this
section specify criteria to be used in determining whether a student's condition meets one or more of the
definitions in federal regulations or in state law.

(b) Eligibility determination. The determination of whether a student is eligible for special education and
related services is made by the student's admission, review, and dismissal (ARD) committee. Any
evaluation or re-evaluation of a student must (shall) 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), 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). Students with pervasive developmental disorders are included
under this category. The team's written report of evaluation must (shall) include specific
recommendations for 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 subsections (c)(3) and (c)(12) of this section:

(A) meets the eligibility criteria for auditory impairment 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 auditory impairment or 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 special education intervention, will adversely affect the student's educational performance.

(3) Auditory impairment. A student with an auditory impairment is one who has been determined to meet the criteria for deafness as stated in 34 CFR, §300.8(c)(3), or for 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 an auditory impairment must include an otological examination performed by an otolaryngologist or by a licensed medical doctor, with documentation that an otolaryngologist is not reasonably available, and an [An] audiological evaluation performed by a licensed audiologist [shall also be conducted]. The evaluation data must [shall] include a description of the implications of the hearing loss for the student's hearing in a variety of circumstances with or without recommended amplification.

(4) Emotional disturbance. A student with an emotional disturbance 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 [shall] include specific recommendations for behavioral supports and interventions.

(5) Intellectual disability. [Mental retardation.] 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), 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 disability is 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.

(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). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on an orthopedic impairment must include 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). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on other health impairment must include a licensed physician.

(9) Learning disability.

(A) Prior to and as part of the evaluation described in subparagraph (B) of this paragraph and 34 CFR, §§300.307-300.311, and in order to ensure that underachievement in 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. Data-based documentation of repeated assessments may include, but is not limited to, response to intervention progress monitoring results, 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.

(B) A student with a 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; and

(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 scientific, research-based intervention; and
does not make sufficient progress when provided a process based on the student's response to scientific, research-based intervention (as defined in 20 USC, §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

exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to age, grade-level standards, or intellectual ability, as indicated by significant variance among specific areas of cognitive function, such as working memory and verbal comprehension, or between specific areas of cognitive function and academic achievement.

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.

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). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on a traumatic brain injury must include a licensed physician, in addition to the licensed or certified practitioners specified in subsection (b)(1) of this section.

Visual impairment. 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). The visual loss should be stated in exact measures of visual field and corrected visual acuity at a distance and at close range in each eye in a report by a licensed ophthalmologist or optometrist. The report should also include prognosis whenever possible. If exact measures cannot be obtained, the eye specialist must so state and provide best estimates. In meeting the criteria stated in 34 CFR, §300.8(c)(13), a student with a visual impairment is one who:

(i) has been determined by a licensed ophthalmologist or optometrist:

(I) to have no vision or to have a serious visual loss after correction; or

(II) to have a progressive medical condition that will result in no vision or a serious visual loss after correction; and

(ii) has been determined by the following evaluations to have a need for special services:

(I) a functional vision evaluation by a certified teacher of students with visual impairments or a certified orientation and mobility specialist professional certified in the education of students with visual impairments or a certified orientation and mobility instructor; 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 and an orientation and mobility evaluation; and

(II) a learning media assessment by a professional certified in the education 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.
§89.1050. The Admission, Review, and Dismissal ([ARD]) Committee.

(a) Each school district shall establish an admission, review, and dismissal ([ARD]) committee for each eligible student with a disability and for each student for whom a full and initial evaluation is conducted pursuant to §89.1011 of this title (relating to [Referral for] Full [and] 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 (Especifically) the following:

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

(2) 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);
34 CFR, §300.530 and §300.531, and TEC, §37.004 (disciplinary placement of students with disabilities);

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

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

TEC, §28.006 (Reading Diagnosis);

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

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

TEC, §28.0213 (Intensive Program of Instruction);

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

TEC, §30.002 (Education for [of] Children with Visual Impairments);

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

TEC, §33.081 (Extracurricular Activities);

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

TEC, §42.151 (Special Education).

(b) For a student [child] from birth through two years of age with visual and/or auditory impairments, an individualized family services plan (IFSP) 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 (TEA) and the Department of Assistive and Rehabilitative Services (Texas Interagency Council on Early Childhood Intervention). For students three years of age and older, school districts must develop an IEP.

(c) ARD committee membership.

ARD committees must [shall] include the following [those persons identified in 34 CFR, §300.321(a), as follows] :

(A) the parents [parent(s)] of the student [child] ;

(B) not less than one regular education teacher of the student [child] (if the student [child] is, or may be, participating in the regular education environment);

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

(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 [children] 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 [team] described in subparagraphs (B)-(D) and (F) [§300.321(b)] 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 [child], including related services personnel, as appropriate; [and]

(G) whenever appropriate, the student [child] with a disability [2]
(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 committee described in subparagraphs (B) and (C) of this paragraph, if the student is identified as an English language learner.

(2) The regular education teacher who serves as a member of a student's ARD committee should be a regular education teacher who is responsible for implementing a portion of the student's IEP.

(3) 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, §300.18 and §300.156.

(4) If the student is:
   (A) a student with a suspected or documented visual impairment, the ARD committee must include a teacher who is certified in the education of students with visual impairments;
   (B) a student with a suspected or documented auditory impairment, the ARD committee must include a teacher who is certified in the education of students with auditory impairments or
   (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 with auditory impairments.

(5) An ARD committee member, including a member described in subsection (c)(4) of this section, 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.

(d) The ARD committee shall make its decisions regarding students referred for a full and individual initial evaluation within 30 calendar days from the date of the completion of the written full and individual initial evaluation report. If the 30th day falls during the summer and school is not in session, the ARD committee shall have until the first day of classes in the fall to finalize decisions concerning the initial eligibility determination, the IEP, and placement, unless the full and individual initial evaluation indicates that the student will need extended school year (ESY) services during that summer.

(e) The written report of the ARD committee shall document the decisions of the committee with respect to issues discussed at the meeting. The report shall include the date, names, positions, and signatures of the
members participating in each meeting in accordance with 34 CFR, §§300.321, 300.322, 300.324, and 300.325. The report shall also indicate each member's agreement or disagreement with the committee's decisions. In the event TEC, §29.005(d)(1), applies, the district shall provide a written or audio taped copy of the student's IEP, as defined in 34 CFR, §300.324 and §300.320. In the event TEC, §29.005(d)(2), applies, the district shall make a good faith effort to provide a written or audio taped copy of the student's IEP, as defined in 34 CFR, §300.324 and §300.320.

(f) A school district shall comply with the following for a student who is newly enrolled in a school district.

(1) If the student was in the process of being evaluated for special education eligibility in the student's previous school district, the student's current school district shall coordinate with the student's 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 evaluation shall be completed not later than the 60th calendar day following the date on which the current school district receives written consent as required by the TEC, §29.004.

(2) When a student transfers within the state and the parents verify that the student was receiving special education services in the previous school district or the previous school district verifies in writing or by telephone that the student was receiving special education services, the school district must meet the requirements of 34 CFR, §§300.323(a) and (e), regarding the provision of special education services. The timeline for completing the requirements outlined in 34 CFR, §§300.323(e)(1) or (2), shall be 30 school days from the date the student is verified as being a student eligible for special education services.

(3) When a student transfers from another state and the parents verify that the student was receiving special education services in the previous school district or the previous school district verifies in writing or by telephone that the student was receiving special education services, the school district must meet the requirements of 34 CFR, §§300.323(a) and (f), regarding the provision of special education services. The timeline for completing the requirements outlined in 34 CFR, §§300.323(f)(1) and (2), shall be 30 school days from the date the student is verified as being a student eligible for special education services.

(4) In accordance with TEC, §25.002, and 34 CFR, §§300.323(a), the school district in which the student was previously enrolled shall furnish the new school district with a copy of the student's education records, including the child's special education records, not later than the 30th calendar day after the student was enrolled in the new school district. The Family Educational Rights and Privacy Act (FERPA), 20 United States Code, §1232g, does not require the student's current and previous school districts to obtain parental consent before requesting or sending the student's special education records if the disclosure is conducted in accordance with 34 CFR, §§99.31(a)(2) and 99.34.

(g) All disciplinary actions regarding students with disabilities shall be determined in accordance with 34 CFR, §§300.101(a) and 300.530-300.536 (relating to disciplinary actions and procedures), the TEC, Chapter 37, Subchapter A (Alternative Settings for Behavior Management), and §89.1053 of this title (relating to Procedures for Use of Restraint and Time-Out).

(f) [4] All members of the ARD committee must [shall] have the opportunity to participate in a collaborative manner in developing the IEP. A decision of the ARD committee concerning required elements of the IEP must [shall] be made by mutual agreement [of the required members] 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 [party (the parents or adult student)] who disagrees must [shall] 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 [have the committee recess for a period of time not to exceed ten school days. This] 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 [which] may lead to a placement in a disciplinary [an]
alternative education program [AEP]. The requirements of this subsection [42] do not prohibit
the members of the ARD committee from recessing an ARD committee meeting for reasons other
than the failure to reach [of the parents and the school district from reaching] mutual agreement
about all required elements of an IEP.

(2) During the recess, the ARD committee members must [shall] consider alternatives, gather
additional data, prepare further documentation, and/or obtain additional resource persons who
[which] may assist in enabling the ARD committee to reach mutual agreement.

[2] The date, time, and place for continuing the ARD committee meeting shall be determined by
mutual agreement prior to the recess.

(3) [45] If a [ten-day] recess is implemented as provided in paragraph (1) of this subsection and the ARD
committee still cannot reach mutual agreement, the school district must [shall] implement the IEP
that [which] it has determined to be appropriate for the student.

(4) [45] When mutual agreement is not reached, a written statement of the basis for the disagreement must
[shall] be included in the IEP. The parent [members] who disagrees must [disagree shall] be
offered the opportunity to write his or her [their] own statement of disagreement [statements].

(6) When a district implements an IEP with which the parents disagree or the adult student disagrees,
the district shall provide prior written notice to the parents or adult student as required in 34 CFR,
§300.503.

(7) Parents shall have the right to file a complaint, request mediation, and request a due process
hearing at any point when they disagree with decisions of the ARD committee.

(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. This notice must be
provided to the parent at least five school days before the school district proposes or refuses the action
unless the parent agrees to a shorter timeframe.

(h) 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.

(i) A school district must comply with the following for a student who is newly enrolled in the school district.

(1) When a student transfers to a new school district within the state in the same school year and the
parents verify that the student was receiving special education services in the previous school
district or the previous school district verifies in writing or by telephone that the student was
receiving special education services, the new school district must meet the requirements of 34
CFR, §300.323(e), regarding the provision of special education services. The timeline for
completing the requirements outlined in 34 CFR, §300.323(e)(1) or (2), is 30 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 verify that the student was receiving special education services in the previous school
district or the previous school district verifies in writing or by telephone that the student was
receiving special education services, the new school district must meet the requirements of 34
CFR, §300.323(f), regarding the provision of special education services. If the new school district
determines that an evaluation is necessary, the evaluation is considered a full individual and initial
evaluation and must be completed within the timelines established by §89.1011(c) and (e) of this
title. The timeline for completing the requirements in 34 CFR, §300.323(f)(2), if appropriate, is 30
calendar days from the date of the completion of the evaluation report. If the school district
determines that an evaluation is not necessary, the timeline for completing the requirements.
outlined in 34 CFR, §300.323(f)(2), is 30 school days from the date the student is verified as being a student eligible for special education services.

(3) In accordance with TEC, §25.002, and 34 CFR, §300.323(g), the school district in which the student was previously enrolled 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.

(j) All disciplinary actions regarding students with disabilities must be determined in accordance with 34 CFR, §§300.101(a) and 300.530-300.536; TEC, Chapter 37, Subchapter A; and §89.1053 of this title (relating to Procedures for Use of Restraint and Time-Out).

§89.1053. Procedures for Use of Restraint and Time-Out.

(a) Requirement to implement. In addition to the requirements of 34 Code of Federal Regulations (CFR), §300.324(a)(2)(i) and (c), school districts and charter schools must implement the provisions of this section regarding the use of restraint and time-out. In accordance with the provisions of Texas Education Code (TEC), §37.0021 (Use of Confinement, Restraint, Seclusion, and Time-Out), it is the policy of the state to treat with dignity and respect all students, including students with disabilities who receive special education services under TEC, Chapter 29, Subchapter A.

(b) Definitions.

(1) Emergency means a situation in which a student’s behavior poses a threat of:

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

(B) imminent, serious property destruction.

(2) Restraint means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of the student’s body.

(3) Time-out means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting:

(A) that is not locked; and

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

(c) Use of restraint. A school employee, volunteer, or independent contractor may use restraint only in an emergency as defined in subsection (b) of this section and with the following limitations.

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

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

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

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

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

(1) A core team of personnel on each campus must be trained in the use of restraint, and the team must include a campus administrator or designee and any general or special education personnel likely to use restraint.

(2) Personnel called upon to use restraint in an emergency and who have not received prior training must receive training within 30 school days following the use of restraint.

(3) Training on use of restraint must include prevention and de-escalation techniques and provide alternatives to the use of restraint.
All trained personnel must receive instruction in current professionally accepted practices and standards regarding behavior management and the use of restraint.

Documentation and notification on use of restraint. In a case in which restraint is used, school employees, volunteers, or independent contractors must implement the following documentation requirements.

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

2. On the day restraint is utilized, a good faith effort must be made to verbally notify the parent(s) regarding the use of restraint.

3. Written notification of the use of restraint must be placed in the mail or otherwise provided to the parent within one school day of the use of restraint.

4. Written documentation regarding the use of restraint must be placed in the student's special education eligibility folder in a timely manner so the information is available to the admission, review, and dismissal (ARD) committee when it considers the impact of the student's behavior on the student's learning and/or the creation or revision of a behavioral intervention plan (BIP).

5. Written notification to the parent(s) and documentation to the student's special education eligibility folder must include the following:

   A. name of the student;
   B. name of the staff member(s) administering the restraint;
   C. date of the restraint and the time the restraint began and ended;
   D. location of the restraint;
   E. nature of the restraint;
   F. a description of the activity in which the student was engaged immediately preceding the use of restraint;
   G. the behavior that prompted the restraint;
   H. the efforts made to de-escalate the situation and alternatives to restraint that were attempted; and
   I. information documenting parent contact and notification.

Clarification regarding restraint. The provisions adopted under this section do not apply to the use of physical force or a mechanical device that does not significantly restrict the free movement of all or a portion of the student's body. Restraint that involves significant restriction as referenced in subsection (b)(2) of this section does not include:

1. physical contact or appropriately prescribed adaptive equipment to promote normative body positioning and/or physical functioning;

2. limited physical contact with a student to promote safety (e.g., holding a student's hand), prevent a potentially harmful action (e.g., running into the street), teach a skill, redirect attention, provide guidance to a location, or provide comfort;

3. limited physical contact or appropriately prescribed adaptive equipment to prevent a student from engaging in ongoing, repetitive self-injurious behaviors, with the expectation that instruction will be reflected in the individualized education program (IEP) as required by 34 CFR, §300.324(a)(2)(i) and (c) to promote student learning and reduce and/or prevent the need for ongoing intervention; or

4. seat belts and other safety equipment used to secure students during transportation.

Use of time-out. A school employee, volunteer, or independent contractor may use time-out in accordance with subsection (b)(3) of this section with the following limitations.
(1) Physical force or threat of physical force must be used to place a student in time-out.

(2) Time-out may only be used in conjunction with an array of positive behavior intervention strategies and techniques and must be included in the student's IEP and/or BIP if it is utilized on a recurrent basis to increase or decrease a targeted behavior.

(3) Use of time-out must not be implemented in a fashion that precludes the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.

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

(1) General or special education personnel who implement time-out based on requirements established in a student's IEP and/or BIP must be trained in the use of time-out.

(2) Newly-identified personnel called upon to implement time-out based on requirements established in a student's IEP and/or BIP must receive training in the use of time-out within 30 school days of being assigned the responsibility for implementing time-out.

(3) Training on the use of time-out must be provided as part of a program which addresses a full continuum of positive behavioral intervention strategies, and must address the impact of time-out on the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.

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

(i) Documentation on use of time-out. Necessary documentation or data collection regarding the use of time-out, if any, must be addressed in the IEP or BIP. The ARD committee must use any collected data to judge the effectiveness of the intervention and provide a basis for making determinations regarding its continued use.

(j) Student safety. Any behavior management technique and/or discipline management practice must be implemented in such a way as to protect the health and safety of the student and others. No discipline management practice may be calculated to inflict injury, cause harm, demean, or deprive the student of basic human necessities.

(k) Data reporting. With the exception of actions covered by subsection (f) of this section, data regarding the use of restraint must be electronically reported to the Texas Education Agency (TEA) in accordance with reporting standards specified by the TEA agency.

(l) Peace officers. The provisions adopted under this section apply to a peace officer only if the peace officer is employed or commissioned by the school district or provides, as a school resource officer, a regular police presence on a school district campus under a memorandum of understanding between the school district and a local law enforcement agency, except that the data reporting requirements in subsection (k) of this section apply to the use of restraint by any peace officer performing law enforcement duties on school property or during a school-sponsored or school-related activity.

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

(1) juvenile probation, detention, or corrections personnel; or

(2) an educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of a school district.

§89.1055. Content of the Individualized Education Program (IEP).

(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.
The IEP must include a statement of any individual appropriate and allowable accommodations in the administration of assessment instruments developed in accordance with Texas Education Code (TEC), §39.023(a)-(c), or districtwide [district-wide] 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 [child] on the assessments. If the ARD committee determines that the student will not participate in a general statewide or districtwide [state-wide assessment or district-wide] assessment of student achievement (or part of an assessment), the IEP must include a statement explaining [of]:

1. why the student [child] cannot participate in the general [regular] assessment; and
2. why the particular alternate assessment selected is appropriate for the student [child].

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 [ESY Services]), then the IEP must identify which of the goals and objectives in the IEP will be addressed during ESY services [from the student’s current IEP].

For students eligible under §89.1040(c)(1) of this title (relating to Eligibility Criteria), the strategies described in paragraphs (1) (11) of this subsection must [shall] be considered, 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 assessment of 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 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 [Behavior Intervention Plan] developed from a functional behavioral assessment [Functional-Behavioral Assessment] that uses current data related to target behaviors and addresses behavioral programming across home, school, and community-based settings;
5. beginning at any age, consistent with subsection (h) [subsections (e)] of this section, futures planning for integrated living, work, community, and educational environments that considers skills necessary to function in current and post-secondary environments;
6. parent/family training and support, provided by qualified personnel with experience in Autism Spectrum Disorders (ASD), that, for example:
   A. provides a family with skills necessary for a student [child] 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 [child’s] curriculum); and
   C. facilitates parental carryover of in-home training (for example: strategies for behavior management and developing structured home environments and/or communication.
training so that parents are active participants in promoting the continuity of interventions across all settings);

(7) suitable staff-to-student ratio appropriate to identified activities and as needed to achieve social/behavioral progress based on the student's developmental and learning level (acquisition, fluency, maintenance, generalization) that encourages work towards individual independence as determined by, for example:

(A) adaptive behavior evaluation results;

(B) behavioral accommodation needs across settings; and

(C) transitions within the school day;

(8) communication interventions, including language forms and functions that enhance effective communication across settings (for example: augmentative, incidental, and naturalistic teaching);

(9) social skills supports and strategies based on social skills assessment/curriculum and provided across settings (for example: trained peer facilitators (e.g., circle of friends), video modeling, social stories, 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 ASD (for example: those associated with discrete-trial training, visual supports, applied behavior analysis, structured learning, augmentative communication, or social skills training).

(f) If the ARD committee determines that services are not needed in one or more of the areas specified in subsection (e) [(e)(1)-(11)] of this section, the IEP must include a statement to that effect and the basis upon which the determination was made.

(g) 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.

(h) In accordance with TEC, §29.011 and §29.0111, not later than when a student reaches 14 years of age, the ARD committee must consider, and if appropriate, address [For each student with a disability, beginning at age 16 (prior to the date on which a student turns 16 years of age) or younger, if determined appropriate by the ARD committee,] the following issues [must be considered] in the [development of the IEP, and if appropriate, integrated into 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 parental involvement in the student's transition;

(3) if the student is at least 18 years of age, appropriate parental involvement in the student's transition, if the parent is invited to participate by the student or the school district in which the student is enrolled;

(4) any postsecondary education options;

(5) a functional vocational evaluation;

(6) employment goals and objectives;

(7) if the student is at least 18 years of age, the availability of age-appropriate instructional environments;

(8) independent living goals and objectives; and

(9) appropriate circumstances for referring a student or the student's parents to a governmental agency for services.
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.

§89.1065. Extended School Year Services (ESY Services).

Extended school year (ESY) services are defined as individualized instructional programs beyond the regular school year for eligible students with disabilities.

1. The need for ESY services must be determined on an individual student basis by the admission, review, and dismissal (ARD) committee in accordance with 34 Code of Federal Regulations (CFR), §300.106, and the provisions of this section. In determining the need for and in providing ESY services, a school district may not:

A. Limit ESY services to particular categories of disability; or

B. Unilaterally limit the type, amount, or duration of ESY services.

2. The need for ESY services must be documented from formal and/or informal evaluations provided by the district or the parents. The documentation must demonstrate that in one or more critical areas addressed in the current individualized education program (IEP) goals and objectives, the student has exhibited, or reasonably may be expected to exhibit, severe or substantial regression that cannot be recouped within a reasonable period of time. Severe or substantial regression means that the student has been, or will be, unable to maintain one or more acquired critical skills in the absence of ESY services.

3. The reasonable period of time for recoupment of acquired critical skills must be determined on the basis of needs identified in each student's IEP. If the loss of acquired critical skills would be particularly severe or substantial, or if such loss results, or reasonably may be expected to result, in immediate physical harm to the student or to others, ESY services may be justified without consideration of the period of time for recoupment of such skills. In any case, the period of time for recoupment must not exceed eight weeks.

4. A skill is critical when the loss of that skill results, or is reasonably expected to result, in any of the following occurrences during the first eight weeks of the next regular school year:

A. Placement in a more restrictive instructional arrangement;

B. Significant loss of acquired skills necessary for the student to appropriately progress in the general curriculum;

C. Significant loss of self-sufficiency in self-help skill areas as evidenced by an increase in the number of direct service staff and/or amount of time required to provide special education or related services;

D. Loss of access to community-based independent living skills instruction or an independent living environment provided by noneducational sources as a result of regression in skills; or

E. Loss of access to on-the-job training or productive employment as a result of regression in skills.

5. If the district does not propose ESY services for discussion at the annual review of a student's IEP, the parent may request that the ARD committee discuss ESY services pursuant to 34 CFR, §300.321.

6. If a student for whom ESY services were considered and rejected loses critical skills because of the decision not to provide ESY services, and if those skills are not regained after the reasonable
§89.1070. Graduation Requirements.

(a) Graduation with a regular high school diploma under subsections (b)(1), (b)(2)(D), (f)(1), (f)(2), or (f)(3)(D) of this section terminates a student's eligibility for special education services under this subchapter and Part B of the Individuals with Disabilities Education Act [20 United States Code, §§1400 et seq. In addition, as provided in Texas Education Code (TEC), §42.003(a)], graduation with a regular high school diploma under subsection (b)(1), (2), or (4) of this section terminates a student's entitlement to the benefits of the Foundation School Program, as provided in Texas Education Code (TEC), §42.003(a).

(b) A student entering Grade 9 in the 2014-2015 school year and thereafter who receives special education services may graduate and be awarded a regular high school diploma if the student meets one of the following conditions.

(1) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-118, 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation under the Foundation High School Program specified in §74.12 of this title (relating to Foundation High School Program) applicable to students in general education as well as satisfactory performance as established in the TEC, Chapter 39, on the required state assessments, unless the student's admission, review, and dismissal (ARD) committee has determined that satisfactory performance on the required state assessments is not necessary for graduation.

(2) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-118, 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation under the Foundation High School Program specified in §74.12 of this title through courses, one or more of which contain modified curriculum that is aligned to the standards applicable to students in general education, as well as satisfactory performance as established in the TEC, Chapter 39, on the required state assessments, unless the student's ARD committee has determined that satisfactory performance on the required state assessments is not necessary for graduation. The student must also successfully complete the student's individualized education program (IEP) and meet one of the following conditions.

(A) Consistent with the IEP, the student has obtained full-time employment, based on the student's abilities and local employment opportunities, in addition to mastering sufficient self-help skills to enable the student to maintain the employment without direct and ongoing educational support of the local school district.

(B) Consistent with the IEP, the student has demonstrated mastery of specific employability skills and self-help skills that do not require direct ongoing educational support of the local school district.

(C) The student has access to services that are not within the legal responsibility of public education or employment or educational options for which the student has been prepared by the academic program.
(D) The student no longer meets age eligibility requirements.

(c) A student receiving special education services may earn an endorsement under §74.13 of this title (relating to Endorsements) if the student:

(1) satisfactorily completes the requirements for graduation under the Foundation High School Program specified in §74.12 of this title as well as the additional credit requirements in mathematics, science, and elective courses as specified in §74.13(e) of this title with or without modified curriculum;

(2) satisfactorily completes the courses required for the endorsement under §74.13(f) of this title without any modified curriculum; and

(3) performs satisfactorily as established in the TEC, Chapter 39, on the required state assessments.

(d) In order for a student receiving special education services to use a course to satisfy both a requirement under the Foundation High School Program specified in §74.12 of this title and a requirement for an endorsement under §74.13 of this title, the student must satisfactorily complete the course without any modified curriculum.

(e) 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. Subsection (c) of this section applies to a student transitioning to the Foundation High School Program under this subsection.

(f) 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) The student has demonstrated mastery of [satisfactorily completed] the required state standards (or district standards if greater) [state's or district's (whichever is greater) required standards] in Chapters 110-118, 126-128, and 130 [110-128 and Chapter 130] of this title and satisfactorily completed credit requirements for graduation (under the recommended or distinguished achievement high school programs in Chapter 74, Subchapter F, of this title (relating to Graduation Requirements, Beginning with School Year 2007-2008) or Chapter 74, Subchapter G, of this title (relating to Graduation Requirements, Beginning with School Year 2012-2013)), as applicable [of this title (relating to Curriculum Requirements)) applicable to students in general education], including satisfactory performance as established in the TEC, Chapter 39, on the required state assessments.

(2) The student has demonstrated mastery of [satisfactorily completed] the required state standards (or district standards if greater) [state's or district's (whichever is greater) required standards] in Chapters 110-118, 126-128, and 130 [110-128 and Chapter 130] of this title and satisfactorily completed credit requirements for graduation (under the minimum high school program in Chapter 74, Subchapter F or G, of this title), as applicable [of this title (relating to Curriculum Requirements)) applicable to students in general education], including participation in required state assessments. The student's ARD [admission, review, and dismissal (ARD)] committee will determine whether satisfactory performance on the required state assessments is necessary for graduation.

(3) The student has demonstrated mastery of [satisfactorily completed] the required state standards (or district standards if greater) [state's or district's (whichever is greater) required standards] in Chapters 110-118, 126-128, and 130 [110-128 and Chapter 130] of this title through courses, one or more of which contain modified content that is aligned to the standards required under the minimum high school program in Chapter 74, Subchapter F or G, of this title, as applicable, [of this title] as well as the satisfactorily completed credit requirements under the minimum high school program, including participation in required state assessments. The student's ARD committee will determine whether satisfactory performance on the required state assessments is necessary for graduation. The student graduating under this subsection must also successfully complete the student's IEP [individualized education program (IEP)] and meet one of the following conditions: [consistent with the IEP].
(A) Consistent with the IEP, the student has obtained full-time employment, based on the student's abilities and local employment opportunities, in addition to mastering sufficient self-help skills to enable the student to maintain the employment without direct and ongoing educational support of the local school district. 

(B) Consistent with the IEP, the student has demonstrated mastery of specific employability skills and self-help skills that do not require direct ongoing educational support of the local school district. 

(C) The student has access to services that are not within the legal responsibility of public education or employment or educational options for which the student has been prepared by the academic program. 

(D) The student no longer meets age eligibility requirements. 

(4) The student no longer meets age eligibility requirements and has completed the requirements specified in the IEP.

(g) All students graduating under this section must be provided with a summary of academic achievement and functional performance as described in 34 Code of Federal Regulations (CFR), §300.305(e)(3). This summary must consider, as appropriate, the views of the parent and student and written recommendations from adult service agencies on how to assist the student in meeting postsecondary goals. An evaluation as required by 34 CFR, §300.305(e)(1), must be included as part of the summary for a student graduating under subsections (b)(2)(A), (B), or (C) or (f)(3)(A), (B), or (C) of this section.

(h) Students who participate in graduation ceremonies but who are not graduating under subsections (b)(2)(A), (B), or (C) or (f)(3)(A), (B), or (C) of this section and who will remain in school to complete their education do not have to be evaluated in accordance with subsection (g) of this section.

(i) Employability and self-help skills referenced under subsections (b)(2) and (f)(3) of this section are those skills directly related to the preparation of students for employment, including general skills necessary to obtain or retain employment.

(j) For students who receive a diploma according to subsections (b)(2)(A), (B), or (C) or (f)(3)(A), (B), or (C) of this section, the ARD committee shall 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.

(k) For purposes of this section, modified curriculum and modified content refer to any reduction of the amount or complexity of the required knowledge and skills in Chapters 110-118, 126-128, and 130 of this title. Substitutions that are specifically authorized in statute or rule must not be considered modified curriculum or modified content.

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

(c) Each school district shall have procedures to ensure that each teacher involved in a student's instruction has the opportunity to provide input and request assistance regarding the implementation of the student's IEP. These procedures must include a method for a student's regular or special education teachers to submit requests for further consideration of the student's IEP or its implementation. In response to this request, the district's procedures shall include a method for the district to determine whether further consideration is necessary and whether this consideration will be informal or will require an ARD committee meeting. If the district determines that an ARD committee meeting is necessary, the student's current regular and special education teachers shall have an opportunity to provide input. The school district shall also ensure that each teacher who provides instruction to a student with disabilities receives relevant sections of the student's current IEP and that each teacher be informed of specific responsibilities related to implementing the IEP, such as goals and benchmarks, and of needed accommodations, modifications, and supports for the child.

(d) Each school district must develop a process to be used by a teacher who instructs a student with a disability:

1. to request a review of the student's IEP;
2. that provides for a timely district response to the teacher's request; and
3. that provides for notification to the student's parent or legal guardian of that response.

(e) Students with disabilities must [shall] have available an instructional day commensurate with that of students without disabilities. The ARD committee must [shall] determine the appropriate instructional setting and length of day for each student, and these must [shall] 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 [shall] 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 [shall] do so in accordance with 34 Code of Federal Regulations, §300.147, and procedures developed by the TEA.

§89.1076. Interventions and Sanctions.

The Texas Education Agency (TEA) must [shall] establish and implement a system of interventions and sanctions, in accordance with the Individuals with Disabilities Education Act, 20 United States Code, §§1400 et seq., Texas Education Code (TEC), §29.010, and TEC, Chapter 39, as necessary to ensure program effectiveness and compliance with federal and state requirements regarding the implementation of special education and related services. In accordance with TEC, §39.102 (§39.131(e)), the TEA may combine any intervention and sanction. The system of interventions and sanctions will include, but not be limited to, the following:

1. on-site review for failure to meet program or compliance requirements;
2. required fiscal audit of specific programs [program(s)] and/or of the district, paid for by the district;
3. required submission of corrective actions [action(s)], including compensatory services, paid for by the district;
4. required technical assistance, paid for by the district;
5. public release of program or compliance review findings;
6. special investigation and/or follow-up verification visits;
7. required public hearing conducted by the local school board of trustees;
8. assignment of a special purpose monitor, conservator, or management team, paid for by the district;
9. hearing before the commissioner of education or designee;
10. reduction in payment or withholding of funds;
§89.1121. Distribution of State Funds.

(a) Procedures for counting the average daily attendance (ADA) of students receiving special education services in various instructional settings must [shall] be developed by the commissioner of education and included in the student attendance accounting handbook adopted under §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook) [daily register for pupil attendance accounting].

(b) State special education funds must [shall] be distributed to school districts on the basis of ADA of full-time equivalents of eligible students served in accordance with §129.21 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes).

(c) The special education attendance must [shall] be converted to contact hours by instructional arrangement and then to full-time equivalents. The full-time equivalent for each instructional arrangement is multiplied by the school district's adjusted basic allotment (ABA) or adjusted allotment (AA) and then multiplied by the weight for the instructional arrangement as prescribed in the Texas Education Code (TEC), §42.151(a). Contact hours for any one student receiving special education services may not exceed six hours per day or 30 hours per week for funding purposes. The total contact hours generated per week is [shall be] divided by 30 to determine the full-time equivalents. Special education full-time equivalents generated are [shall be] deducted from the school district's ADA for purposes of the regular education allotment.

(d) The receipt of special education funds is [shall be] contingent upon the operation of an approved comprehensive special education program in accordance with state and federal laws and regulations. No district may divert special education funds for other purposes, with the exception of administrative costs as defined in Chapter 105, Subchapter B, of this title (relating to Use of State Funds [Maximum Indirect Cost Allowable on Certain Foundation School Program Allotments]). Funds generated by full-time equivalents in one instructional arrangement may be spent on the overall special education program and are not limited to the instructional arrangement which generated the funds. The district must maintain separate accountability for the total state special education program fund within the general fund.

(e) A special education fund balance may be carried over to the next fiscal year but must be expended on the special education program in the subsequent year. State special education carryover funds cannot be used for administrative costs.

(f) Students who are at least three, but younger than 22, years of age on September 1 of the current scholastic year who participate in the regional day school program for the deaf may be counted as part of the district's ADA if they receive instruction from the basic program for at least 50% of the school day.

(g) Students from birth through age two with a visual or auditory impairment or both who are provided services by the district according to an individual family services plan (IFSP) must [shall] be enrolled on the district home or regional day school campus and must [shall] be considered eligible for ADA on the same basis as other students receiving special education services.

(h) Funding for the mainstream special education instructional arrangement must [shall] be based on the average daily attendance of the students in the arrangement multiplied by the [ABA or AA] [adjusted basic allotment/adjusted allotment (ABA/AA)] and the 1.1 weight. The attendance must [shall] not be converted to contact hours/full-time equivalents as with the other instructional arrangements.

Division 5. Special Education and Related Service Personnel
§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 (CFR), §300.156; the Texas Education Code (TEC), §§21.002, 21.003, and 29.304; or appropriate state agency credentials.

(b) 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 (TEA) certificate in speech and hearing therapy or speech and language therapy, or a valid state license as a speech/language pathologist.

(2) Teachers holding only a special education endorsement for early childhood education for children with disabilities must be assigned only to programs serving infants through Grade 6.

(3) 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 (ESC).

(4) Teachers certified in the education of students with auditory impairments must be available to students with auditory impairments, 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.

(5) The following provisions apply to physical education.

(A) When the admission, review, and dismissal (ARD) committee has made the determination and the arrangements are specified in the student's individualized education program (IEP), physical education may be provided by 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 therapy 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.

(6) 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, including deaf-blindness, must be certified in education for students who are deaf and severely hard of hearing.

(7) Teachers with secondary certification with the generic delivery system may be assigned to teach Grades 6-12 only.

(c) Paraprofessional personnel must be certified and may be assigned to work with eligible students, general and special education teachers, and related service personnel. Educational aides (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 [Aides] paid from state administrative funds may be
assigned to [the Special Education Resource System (SERS), the Special Education Management System
(SEMS), or other] special education clerical or administrative duties.

(d) Interpreting services for students who are deaf must [shall] 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 (RID)
or the Texas Board for Evaluation of Interpreters (BEI), Department of Assistive and Rehabilitative
Services (DARS), Office for Deaf and Hard of Hearing Services (DHHS).

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

Division 7. Dispute Resolution

§89.1150. General Provisions.

(a) It is the policy and intent of the Texas Education Agency (TEA) to encourage and support the resolution of
any dispute that arises between a parent and a public education agency relating to the identification,
evaluation, or educational placement of or the provision of a free appropriate public education (FAPE) to a
student with a disability at the lowest level possible and in a prompt, efficient, and effective manner.

(b) The possible options for resolving disputes include, but are not limited to:

(1) meetings of the student's admission, review, and dismissal committee, including individualized
education program (IEP) facilitation if offered by the public education agency in accordance with
§89.1196 of this title (relating to Individualized Education Program Facilitation);

(2) meetings or conferences with the student's teachers;

(3) meetings or conferences, subject to the public education agency's policies, with the campus
administrator, the special education director of the public education agency (or the shared services
arrangement to which the public education agency may be a member), the superintendent of the
public education agency, or the board of trustees of the public education agency;

(4) requesting state IEP facilitation in accordance with §89.1197 of this title (relating to State
Individualized Education Program Facilitation);

(5) requesting mediation through the TEA in accordance with 34 Code of Federal Regulations (CFR),
§300.506;

(6) filing a complaint with the TEA in accordance with 34 CFR, §300.153; or

(7) requesting a due process hearing through the TEA in accordance with 34 CFR, §§300.507-
300.514.

§89.1195. Special Education Complaint Resolution.

(a) In accordance with 34 Code of Federal Regulations (CFR), §300.151, the Texas Education Agency (TEA)
has established a complaint resolution process that provides for the investigation and issuance of findings
regarding alleged violations of Part B of the Individuals with Disabilities Education Act (IDEA).

(b) A complaint may be filed with the TEA by any individual or organization and must [shall]:

(1) be in writing;

(2) include the signature and contact information for the complainant;

(3) contain a statement that a public education agency has violated Part B of the IDEA; 34 CFR,
§300.1 et seq.; or a state special education statute or administrative rule;

(4) include the facts upon which the complaint is based;
if alleging violations with respect to a specific student, include:

(A) the name and address of the residence of the student;

(B) the name of the school the student is attending;

(C) in the case of a homeless child or youth (within the meaning of §725(2) of the McKinney-Vento Homeless Act (42 United States Code, §11434a(2)), available contact information for the student and the name of the school the student is attending;

(D) a description of the nature of the problem of the student, including facts relating to the problem; and

(E) a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed;

(6) allege a violation that occurred not more than one calendar year prior to the date the complaint is received; and

(7) be forwarded to the public education agency that is the subject of the complaint at the same time that the complaint is filed.

(c) A complaint must be filed with the TEA by mail, hand-delivery, or facsimile. The TEA has developed a form that may be used by persons or organizations filing a complaint. The form is available on request from the TEA and is also available on the TEA website.

(d) If a complaint does not meet the requirements outlined in subsection (b) of this section, the TEA shall notify the complainant of the deficiencies in the complaint.

(e) Upon receipt of a complaint that meets the requirements of this section, the TEA shall initiate an investigation to determine whether the public education agency is in compliance with applicable law and regulations in accordance with the following procedures.

(1) The TEA shall send written notification to the parties acknowledging receipt of a complaint.

(A) The notification shall include:

(i) the alleged violations that will be investigated;

(ii) alternative procedures available to address allegations in the complaint that are outside of the scope of Part B of the IDEA; 34 CFR, §300.1, et seq.; or a state special education statute or administrative rule;

(iii) a statement that the public education agency may, at its discretion, investigate the alleged violations and propose a resolution of the complaint;

(iv) a statement that the parties have the opportunity to resolve the complaint through mediation in accordance with the procedures in §89.1193 of this title (relating to Special Education Mediation);

(v) a timeline for the public education agency to submit:

(I) documentation demonstrating that the complaint has been resolved; or

(II) a written response to the complaint and all documentation and information requested by the TEA;

(vi) a statement that the complainant may submit additional information about the allegations in the complaint, either orally or in writing within a timeline specified by the TEA, and may provide a copy of any additional information to the public education agency to assist the parties in resolving the dispute at the local level; and
a statement that the TEA may grant extensions of the timeline for a party to submit information under clause (v) or (vi) of this subparagraph at the request of either party.

(B) The public education agency must provide the TEA with a written response to the complaint and all documentation and information requested by the TEA. The public education agency must forward its response to the parent who filed the complaint at the same time that the response is provided to the TEA. The public education agency may also provide the parent with a copy of the documentation and information requested by the TEA. If the complaint was filed by an individual other than the student’s parent, the public education agency must forward a copy of the response to that individual only if written parental consent has been provided to the public education agency.

(2) If the complaint is also the subject of a due process hearing or if it contains multiple issues of which one or more are part of that due process hearing, the TEA must:

(A) set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing; and

(B) resolve any issue in the complaint that is not a part of the due process hearing.

(3) If an issue raised in the complaint has previously been decided in a due process hearing involving the same parties, the TEA must inform the complainant that the due process hearing decision is binding.

(4) The TEA has 60 calendar days after a valid written complaint is received to carry out the investigation and to resolve the complaint. The TEA may extend the time limit beyond 60 calendar days if exceptional circumstances, as determined by the TEA, exist with respect to a particular complaint. The parties will be notified in writing by the TEA of the exceptional circumstances, if applicable, and the extended time limit. The time limit may also be extended if the parties agree to extend it in order to engage in mediation pursuant to §89.1193 of this title or other alternative means of dispute resolution. In accordance with the Texas Education Code, §29.010(e), the TEA must expedite a complaint alleging that a public education agency has refused to enroll a student eligible for special education and related services or that otherwise indicates a need for expedited resolution, as determined by the TEA.

(5) During the course of the investigation, the TEA must:

(A) conduct an investigation of the complaint that include a complete review of all relevant documentation and that may include interviews with appropriate individuals and an independent on-site investigation, if necessary;

(B) consider all facts and issues presented and the applicable requirements specified in law, regulations, or standards;

(C) make a determination of compliance or noncompliance on each issue in the complaint based upon the facts and applicable law, regulations, or standards and issue a written report of findings of fact and conclusions, including reasons for the decision, and any corrective actions that are required, including the time period within which each action must be taken;

(D) review any evidence that the public education agency has corrected noncompliance on its own initiative;

(E) ensure that the TEA’s final decision is effectively implemented, if needed, through technical assistance activities, negotiations, and corrective actions to achieve compliance; and

(F) in the case of a complaint filed by an individual other than the student’s parent, provide a copy of the written report only if written parental consent has been provided to the TEA.
§89.1196. Individualized Education Program Facilitation.

(a) For the purpose of this section and Texas Education Code, §29.019, individualized education program (IEP) facilitation refers to a method of alternative dispute resolution that involves the use of a trained facilitator to assist an admission, review, and dismissal (ARD) committee in developing an IEP for a student with a disability. The facilitator uses facilitation techniques to help the committee members communicate and collaborate effectively. While public education agencies are not required to offer IEP facilitation as an alternative dispute resolution method, the Texas Education Agency (TEA) encourages the use of IEP facilitation as described in this section.

(b) A public education agency is not prohibited from incorporating elements of IEP facilitation into ARD committee meetings that are conducted without the assistance of a facilitator as described in this section. For example, a public education agency may provide training on communication skills, conflict management, or meeting effectiveness to individuals who participate in ARD committee meetings to enhance collaboration and efficiency in those meetings.

(c) A public education agency that chooses to offer IEP facilitation under this section may determine whether to use independent contractors, employees, or other qualified individuals as facilitators. At a minimum, an individual who serves as a facilitator must:

1. have demonstrated knowledge of federal and state requirements relating to the provision of special education and related services to students with disabilities;
2. have demonstrated knowledge of and experience with the ARD committee meeting process;
3. have completed 18 hours of training in IEP facilitation, consensus building, and/or conflict resolution; and
4. complete continuing education as determined by the public education agency.

§89.1196. Individualized Education Program Facilitation.

(6) In resolving a complaint in which a failure to provide appropriate services is found, the TEA must address:

(A) the failure to provide appropriate services, including corrective action appropriate to address the needs of the student, including compensatory services, monetary reimbursement, or other corrective action appropriate to the needs of the student; and

(B) appropriate future provision of services for all students with disabilities.

(7) In accordance with 34 CFR, §300.600(e), the public education agency must complete all required corrective actions as soon as possible, and in no case later than one year after the TEA's identification of the noncompliance. A public education agency's failure to correct the identified noncompliance within the one-year timeline will result in an additional finding of noncompliance under 34 CFR, §300.600(e), and may result in sanctions against the public education agency in accordance with §89.1076 of this title (relating to Interventions and Sanctions).

(f) If a party to a complaint believes that the TEA's written report includes an error that is material to the determination in the report, the party may submit a signed written request for reconsideration to the TEA by mail, hand-delivery, or facsimile within 15 calendar days of the date of the report. The party's reconsideration request must identify the asserted error and include any documentation to support the claim. The party filing a reconsideration request must forward a copy of the request to the other party at the same time that the request is filed with the TEA. The other party may respond to the reconsideration request within five calendar days of the date on which the TEA received the request. The TEA will consider the reconsideration request and provide a written response to the parties within 45 calendar days of receipt of the request. The filing of a reconsideration request must not delay a public education agency's implementation of any corrective actions required by the TEA.

(g) In accordance with 34 CFR, §300.151, the TEA's complaint resolution procedures must be widely disseminated to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.
(d) A public education agency that chooses to offer IEP facilitation under this section must ensure that:

1. participation is voluntary on the part of the parties;
2. the facilitation is provided at no cost to parents; and
3. the process is not used to deny or delay the right to pursue a special education complaint, mediation, or a due process hearing in accordance with Part B of the Individuals with Disabilities Education Act (IDEA) and this division.

(e) A public education agency that chooses to offer IEP facilitation under this section must develop written policies and procedures that include:

1. the procedures for requesting facilitation;
2. facilitator qualifications, including whether facilitators are independent contractors, employees, or other qualified individuals;
3. the process for assigning a facilitator;
4. the continuing education requirements for facilitators; and
5. a method for evaluating the effectiveness of the facilitation services and the individual facilitators.

(f) A public education agency that chooses to offer IEP facilitation under this section must provide parents with information about the process, including a description of the procedures for requesting IEP facilitation and information related to facilitator qualifications. This information must be included when a copy of the procedural safeguards notice under 34 Code of Federal Regulations (CFR), §300.504 is provided to parents, although this information may be provided as a separate document and may be provided in a written or electronic format.

(g) A facilitator under this section must not be a member of the student's ARD committee, must not have any decision-making authority over the committee, and must remain impartial to the topics under discussion. The facilitator must assist with the overall organization and conduct of the ARD committee meeting by:

1. assisting the committee in establishing an agenda and setting the time allotted for the meeting;
2. assisting the committee in establishing a set of guidelines for the meeting;
3. guiding the discussion and keeping the focus on developing a mutually agreed upon IEP for the student;
4. ensuring that each committee member has an opportunity to participate [speak and be heard];
5. helping to resolve disagreements that arise; and
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.

(h) Promptly after being assigned to facilitate an ARD committee meeting, or within a timeline established under the public education agency's procedures, the facilitator must contact the parents and public education agency representative to clarify the issues, gather necessary information, and explain the IEP facilitation process.

(i) A public education agency that chooses to offer IEP facilitation under this section must ensure that facilitators protect the confidentiality of personally identifiable information about the student and comply with the requirements in the Family Educational Rights and Privacy Act regulations, 34 CFR, Part 99, relating to the disclosure and redisclosure of personally identifiable information from a student's education record.

(j) The TEA will develop information regarding IEP facilitation as an alternative dispute resolution method, and such information will be available upon request from the TEA and on the TEA website.
§89.1197. State Individualized Education Program Facilitation.

(a) In accordance with the Texas Education Code, §29.020, the Texas Education Agency (TEA) will establish a program that provides independent individualized education program (IEP) facilitators beginning with the 2014-2015 school year.

(b) For the purpose of this section, IEP facilitation has the same general meaning as described in §89.1196(a) of this title (relating to Individualized Education Program Facilitation), except that state IEP facilitation is used when the admission, review, and dismissal (ARD) committee is in dispute about decisions relating to the provision of a free and appropriate public education to a student with a disability and the facilitator is an independent facilitator provided by the TEA.

(c) A request for IEP facilitation under this section must be filed by completing a form developed by the TEA that is available upon request from the TEA and on the TEA website. The form must be filed with the TEA by one of the parties by mail, hand-delivery, or facsimile.

(d) IEP facilitation under this section must be voluntary on the part of the parties and provided at no cost to the parties.

(e) In order for the TEA to provide an independent facilitator, the following conditions must be met.

1. The required form must be completed and signed by both parties.
2. The dispute must relate to an ARD committee meeting in which mutual agreement about one or more of [all] the required elements of the IEP was not reached and the parties have agreed to recess and reconvene the meeting in accordance with §89.1050(f) of this title (relating to The Admission, Review, and Dismissal Committee).
3. The request for IEP facilitation must have been filed within five calendar days of the ARD committee meeting that ended in disagreement, and a facilitator must be available on the date set for reconvening the meeting.
4. The dispute must not relate to a manifestation determination or determination of interim alternative educational setting under 34 Code of Federal Regulations (CFR), §300.530 or §300.531.
5. The same parties must not be concurrently involved in special education mediation under §89.1193 of this title (relating to Special Education Mediation).
6. The issues in dispute must not be the subject of a special education complaint under §89.1195 of this title (relating to Special Education Complaint Resolution) or a special education due process hearing under §89.1151 of this title (relating to Special Education Due Process Hearings) and §89.1165 of this title (relating to Request for Special Education Due Process Hearing).
7. The same parties must not have participated in IEP facilitation concerning the same student under this section within the same school year of the filing of the current request for IEP facilitation.

Within five business days of receipt of a request for an IEP facilitation under this section, the TEA will determine whether the conditions in subsections (c)-(e) of this section have been met and will notify the parties of its determination and the assignment of the independent facilitator, if applicable.

(g) Notwithstanding subsections (b)-(e) of this section, if a special education due process hearing or complaint decision requires a public education agency to provide an independent facilitator to assist with an ARD committee meeting, the public education agency may request that the TEA assign an independent facilitator. Within five business days of receipt of a written request for IEP facilitation under this subsection, the TEA will notify the parties of its decision to assign or not assign an independent facilitator. If TEA declines the request to assign an independent facilitator, the public education agency must provide an independent facilitator at its own expense.

(h) The TEA’s decision not to provide an independent facilitator is final and not subject to review or appeal.

(i) The independent facilitator assignment may be made based on a combination of factors, including, but not limited to, geographic location and availability. Once assigned, the independent facilitator must promptly contact the parties to clarify the issues, gather necessary information, and explain the IEP facilitation process.
The TEA will use a competitive solicitation method to seek independent facilitation services, and the contracts with independent facilitators will be developed and managed in accordance with the TEA's contracting practices and procedures.

At a minimum, an individual who serves as an independent facilitator under this section:

1. must have demonstrated knowledge of federal and state requirements relating to the provision of special education and related services to students with disabilities;
2. must have demonstrated knowledge of and experience with the ARD committee meeting process;
3. must have completed 18 hours or more of training in IEP facilitation, consensus building, and/or conflict resolution as specified in the TEA's competitive solicitation;
4. must complete continuing education as determined by the TEA;
5. may not be an employee of the TEA or the public education agency that the student attends; and
6. may not have a personal or professional interest that conflicts with his or her impartiality.

An individual is not an employee of the TEA solely because the individual is paid by the TEA to serve as an independent facilitator.

An independent facilitator must not be a member of the student's ARD committee, must not have any decision-making authority, and must remain impartial to the topics under discussion. The independent facilitator must assist with the overall organization and conduct of the ARD committee meeting by:

1. assisting the committee in establishing an agenda and setting the time allotted for the meeting;
2. assisting the committee in establishing a set of guidelines for the meeting;
3. guiding the discussion and keeping the focus on developing a mutually agreed upon IEP for the student;
4. ensuring that each committee member has an opportunity to participate [speak and be heard];
5. helping to resolve disagreements that arise; and
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.

An independent facilitator must protect the confidentiality of personally identifiable information about the student and comply with the requirements in the Family Educational Rights and Privacy Act regulations, 34 CFR, Part 99, relating to the disclosure and redisclosure of personally identifiable information from a student's education record.

The TEA will develop surveys to evaluate the IEP facilitation program and the independent facilitators and will request that parties who participate in the program complete the surveys.