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Section 8 - ADMINISTRATION

I. SCOPE AND APPLICABILITY

§300.1 Purposes.

The purposes of this part are--

- (a) To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;**
- (b) To ensure that the rights of children with disabilities and their parents are protected;**
- (c) To assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities; and**
- (d) To assess and ensure the effectiveness of efforts to educate children with disabilities.**
(Authority: 20 U.S.C. 1400(d))

TAC §89.1001. Scope and Applicability.

- (a) Special education services shall be provided to eligible students in accordance with all applicable federal law and regulations, state statutes, rules of the State Board of Education (SBOE) and commissioner of education, and the State Plan under Part B of the Individuals with Disabilities Education Act (IDEA).
- (b) Education programs, under the direction and control of the Texas Youth Commission, Texas School for the Blind and Visually Impaired, Texas School for the Deaf, and schools within the Texas Department of Criminal Justice shall comply with state and federal law and regulations concerning the delivery of special education and related services to eligible students and shall be monitored by the Texas Education Agency in accordance with the requirements identified in subsection (a) of this section.
- (c) A school district having a residential facility that is licensed by appropriate state agencies and located within the district's boundaries must provide special education and related services to eligible students residing in the facility. If, after contacting the facility to offer services to eligible students with disabilities, the district determines that educational services are provided through a charter school, approved non-public school, or a facility operated private school, the district is not required to provide services. However, the district shall annually contact the facility to offer services to eligible students with disabilities.

§300.212 Public information.

The Perryton Special Education SSA must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the agency under Part B of the Act.
(Authority: 20 U.S.C. 1413(a)(8))

II. FAPE – FREE APPROPRIATE PUBLIC EDUCATION

§300.17 Free appropriate public education. Free appropriate public education or FAPE means special education and related services that--

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the SEA, including the requirements of this part;
- (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.320 through 300.324. (Authority: 20 U.S.C. 1401(9))

§300.101 Free appropriate public education (FAPE).

- (a) **General.** A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in §300.530(d).
- (b) **FAPE for children beginning at age 3.**
 - (1) Each State must ensure that--
 - (i) The obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday; and
 - (ii) An IEP or an IFSP is in effect for the child by that date, in accordance with §300.323(b).
 - (2) If a child's third birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP or IFSP will begin.
- (c) **Children advancing from grade to grade.**
 - (1) Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.
 - (2) The determination that a child described in paragraph (a) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations. (Authority: 20 U.S.C. 1412(a)(1)(A))

§300.102 Limitation--exception to FAPE for certain ages.

- (a) **General.** The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:
 - (1) Children aged 3, 4, 5, 18, 19, 20, or 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children of those ages.
 - (2) (i) Children aged 18 through 21 to the extent that State law does not require that special education and related services under Part B of the Act be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility--
 - (A) Were not actually identified as being a child with a disability under §300.8; and
 - (B) Did not have an IEP under Part B of the Act.
 - (ii) The exception in paragraph (a)(2)(i) of this section does not apply to children with disabilities, aged 18 through 21, who --
 - (A) Had been identified as a child with a disability under §300.8 and had received services in accordance with an IEP, but who left school prior to their incarceration; or
 - (B) Did not have an IEP in their last educational setting, but who had actually been identified as a child with a disability under §300.8.
 - (3) (i) Children with disabilities who have graduated from high school with a regular high school diploma.
 - (ii) The exception in paragraph (a)(3)(i) of this section does not apply to students who have graduated but have not been awarded a regular high school diploma.
 - (iii) Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with §300.503.

(iv) As used in paragraphs (a)(3)(i) through (a)(3)(iii) for this section, the term regular high school diploma does not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or a general educational development credential (GED).

(4) Children with disabilities who are eligible under subpart H of this part, but who receive early intervention services under Part C of the Act.

(b) **Documents relating to exceptions.** The State must assure that the information it has provided to the Secretary regarding the exceptions in paragraph (a) of this section, as required by §300.700 (for purposes of making grants to States under this part), is current and accurate.

(Authority: 20 U.S.C. 1412(a)(1)(B)-(C))

§300.103 FAPE – methods and payments.

(a) Each State may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of this part. For example, if it is necessary to place a child with a disability in a residential facility, a State could use joint agreements between the agencies involved for sharing the cost of that placement.

(b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for service provided to a child with a disability.

(c) Consistent with 300.323(c), the State must ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined. (Authority: 20 U.S.C. 1401(8), 1412(a)(1))

On March 22, 2017, the US Supreme Court decided a case regarding FAPE-Free Appropriate Public Education (the first one since Rowley v. Board of Education). The ruling in its entirety can be found:

https://www.supremecourt.gov/opinions/16pdf/15-827_0pm1.pdf

In Texas the 5th Circuit Court standard was set in the hearing of Cypress Fairbanks ISD v. Michael F. in July 1997 with the following four part test (and is consistent with this US Supreme Court standard):

- (1) The IEP is individualized based on performance and assessment;
- (2) The placement is in the Least Restrictive Environment;
- (3) The services are provided in a coordinated and collaborative manner by the key "stakeholders;" and
- (4) positive academic and non-academic benefits are demonstrated.

The development of each IEP is highly "individualized" with goals and objectives designed to be "appropriately ambitious" and challenging. Also, the IEP is "reasonably calculated" to enable the child to make progress appropriate in light of his/her circumstances. Our ARD members follow the 4 part test in developing students' IEPs. Our teachers are provided training opportunities annually through the ESC or locally to improve skills in this area. The measurement of a FAPE (Free Appropriate Public Education) is also individualized. In the 2017 ruling, the SCOTUS noted that Federal law requires States to "educate a wide spectrum" of children with disabilities and "the benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable by children at the other end," and SCOTUS declined "to establish any one test for determining the adequacy of educational benefits conferred upon all children covered by the Federal Act."

§300.109 Full educational opportunity goal (FEOG).

The State must have in effect policies and procedures to demonstrate that the State has established a goal of providing full educational opportunity to all children with disabilities, aged birth through 21, and a detailed timetable for accomplishing that goal. (Authority: 20 U.S.C. 1412(a)(2))

TEC §1.002. Equal Educational Services or Opportunities.

(a) An educational institution undertaking to provide education, services, or activities to any individual within the jurisdiction or geographical boundaries of the educational institution shall provide equal opportunities to all individuals within its jurisdiction or geographical boundaries pursuant to this code.

(b) An educational institution may not deny services to any individual eligible to participate in a school district's special education program as provided by Section 29.003, but the educational institution shall provide individuals with disabilities special educational services as authorized by law or, where expressly authorized, assist in and contribute toward the provision of appropriate special educational services in cooperation with other educational institutions and other appropriate agencies, institutions, or departments.

§300.110 Program options.

The State must ensure that each public agency takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

III. SPECIAL EDUCATION DEFINED

§300.39 Special education.

(a) General.

- (1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including--**
 - (i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and**
 - (ii) Instruction in physical education.**
- (2) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section--**
 - (i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;**
 - (ii) Travel training; and**
 - (iii) Vocational education.**

(b) Individual special education terms defined. The terms in this definition are defined as follows:

- (1) At no cost means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.**
- (2) Physical education means--**
 - (i) The development of--**
 - (A) Physical and motor fitness;**
 - (B) Fundamental motor skills and patterns; and**
 - (C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and**
 - (ii) Includes special physical education, adapted physical education, movement education, and motor development.**
- (3) Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction--**
 - (i) To address the unique needs of the child that result from the child's disability; and**
 - (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the Perryton Special Education SSA that apply to all children.**
- (4) Travel training means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to--**
 - (i) Develop an awareness of the environment in which they live; and**
 - (ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).**
- (5) Vocational education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.**
- (6) Vocational and technical education means organized educational activities that--**
 - (i) Offer a sequence of courses that--**
 - (A) Provides individuals with the rigorous and challenging academic and technical knowledge and skills the individuals need to prepare for further education and for careers (other than careers requiring a Master's or doctoral degree) in current or emerging employment sectors;**
 - (B) May include the provision of skills or courses necessary to enroll in a sequence of courses that meet the requirements of this subparagraph; and**
 - (C) Provides, at the postsecondary level, for a 1- year certificate, an associate degree, or industry-recognized credential; and**
 - (ii) Include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability**

skills, technical skills, and occupation-specific skills, or an individual. (Authority: 20 U.S.C.1401(29))

§300.34 Related Services *(located in Section 4 of this manual)*

§300.42 Supplementary aids and services. Supplementary aids and services means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§300.112 through 300.116. *This would include any assistive technology devices and services determined by the IEP committee that the child needs to receive FAPE – free appropriate public education.*

§300.35 Scientifically based research. Scientifically based research has the meaning given the term in section 9101(37) of the ESEA. (Authority: 20 U.S.C. 1411(e)(2)(C)(xi))

ESEA section 9101 (37)

(37) SCIENTIFICALLY BASED RESEARCH- The term scientifically based research —

(A) means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and

(B) includes research that —

(i) employs systematic, empirical methods that draw on observation or experiment;

(ii) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(iii) relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

(iv) is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

(v) ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

(vi) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

IV. PERSONNEL

§300.156 Personnel qualifications.

- (a) **General.** The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.
- (b) **Related services personnel and paraprofessionals.** The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that--
- (1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and
 - (2) Ensure that related services personnel who deliver services in their discipline or profession--
 - (i) Meet the requirements of paragraph (b)(1) of this section; and
 - (ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
 - (iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.
- (c) **Qualifications for special education teachers.** The qualifications described in paragraph (a) of this section must ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in section 1119(a)(2) of the ESEA.
- (d) **Policy.** In implementing this section, a State must adopt a policy that includes a requirement that LEAs in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.
- (e) **Rule of construction.** Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular SEA or LEA employee to be highly qualified; or to prevent a parent from filing a complaint about staff qualifications with the SEA as provided for under this part.

TEC §21.002. Teacher Employment Contracts.

- (a) A school district shall employ each classroom teacher, principal, librarian, nurse, or counselor under:
- (1) a probationary contract, as provided by Subchapter C;
 - (2) a continuing contract, as provided by Subchapter D; or
 - (3) a term contract, as provided by Subchapter E.
- (b) A district is not required to employ a person other than an employee listed in Subsection (a) under a probationary, continuing, or term contract.
- (c) Each board of trustees shall establish a policy designating specific positions of employment, or categories of positions based on considerations such as length of service, to which continuing contracts or term contracts apply.

TEC §21.003. Certification Required.

- (a) A person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, or counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by Subchapter B.
- (b) A person may not be employed by a school district as an audiologist, occupational therapist, physical therapist, physician, nurse, school psychologist, associate school psychologist, social worker, or speech language pathologist unless the person is licensed by the state agency that licenses that profession and may perform specific services within those professions for a school district only if the person holds the appropriate credential from the appropriate state agency. As long as a person employed by a district before September 1, 2011, to perform marriage and family therapy, as defined by Section 502.002, Occupations

Code, is employed by the same district, the person is not required to hold a license as a marriage and family therapist to perform marriage and family therapy with that district.

Texas Requirements for Public School Personnel Assignments:

[https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=4&ti=19&pt=7&ch=231](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=19&pt=7&ch=231). Also see:

<http://ritter.tea.state.tx.us/sbecrules/tac/chapter231/>

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

- (a) All special education and related service personnel must be certified, endorsed, or licensed in the area or areas of assignment in accordance with 34 Code of Federal Regulations, §300.156; the Texas Education Code, §§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 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 students 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.
 - (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 committee has made the determination and the arrangements are specified in the student's individualized education program, 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 may also be assigned to assist students with special education transportation, serve as a job coach, or serve in support of community-based instruction. Educational aides paid from state administrative funds may be assigned to special education clerical or administrative duties.
- (d) Interpreting services for students who are deaf must be provided by an interpreter who is certified in the appropriate language mode(s), if certification in such mode(s) is available. If certification is available, the interpreter must be a certified member of or certified by the Registry of Interpreters for the Deaf (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.

TAC §231.611. Special Education Teacher.

- (a) Subject to the requirements in subsection (c) of this section, an assignment for Special Education Teacher is allowed with one of the following certificates. If an individual is providing content instruction in a special education classroom setting, a valid certificate that matches the subject and grade level of the assignment is also required, or the individual must demonstrate competency through the state's 2010 and 2011 high objective uniform State standard of evaluation for elementary and secondary special education teachers.
- (1) Blind School (Texas State School for the Blind and Visually Impaired only).
 - (2) Deaf and Severely Hard of Hearing.
 - (3) Deaf School (Texas State School for the Deaf only).
 - (4) Deaf-Blind.
 - (5) Deficient Vision.
 - (6) Early Childhood Education for Handicapped Children (Infants-Grade 6 only).
 - (7) Elementary Generic Special Education.
 - (8) Emotionally Disturbed.
 - (9) Generic Special Education.
 - (10) Hearing Impaired.
 - (11) High School--Generic Special Education.
 - (12) Language and/or Learning Disabilities.
 - (13) Mentally Retarded.
 - (14) Physically Handicapped.
 - (15) School Speech-Language Pathologist.
 - (16) Secondary Generic Special Education (Grades 6-12) (Grades 6-12 only).
 - (17) Severely and Profoundly Handicapped.
 - (18) Severely Emotionally Disturbed and Autistic.
 - (19) Special Education Supplemental (Valid at grade level and subject area of the base certificate).
 - (20) Special Education: Early Childhood-Grade 12.
 - (21) Speech and Hearing Therapy.
 - (22) Speech and Language Therapy.
 - (23) Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12.
 - (24) Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12.
 - (25) Visually Handicapped.
- (b) The certificates specified in subsection (a) of this section are appropriate for a special education assignment in Prekindergarten-Grade 12 except where otherwise noted.
- (c) The employing school district should make every effort to secure educators trained in the specialized skills and knowledge needed to serve the special needs of the children. If a staff member does not have the skills and knowledge needed for the assignment, the school district is responsible for making provisions for the person to acquire the necessary skills and knowledge.

TAC §230.31. Types of Certificates.

- (d) Effective September 1, 2017, the educational aide certificate shall be valid for two years. Educational aide certificates issued effective September 1, 2017, will expire at the end of the two-year validity period. Individuals issued an educational aide certificate prior to September 1, 2017, as well as new applicants for the educational aide certificate, will be required to reapply for certification every two years and meet any other requirements for the educational aide certificate as specified in §230.65 of this title (relating to Requirements for Reissuance of Educational Aide Certificates).
<http://ritter.tea.state.tx.us/sbecrules/tac/chapter230/index.html>

TAC §231.615. Full-Time Teacher of Orthopedically Impaired or Other Health Impaired in a Hospital Class or Home-Bound Instruction

An assignment for Full-Time Teacher of Orthopedically Impaired or Other Health Impaired in a Hospital Class or Home-Bound Instruction is allowed with one of the following certificates.

- (1) Special education certificate as specified in §231.611 of this title (relating to Special Education Teacher).
- (2) Teacher certificate. This assignment requires a three semester credit hour survey course in special education and three semester credit hour course related to teaching students who are physically impaired or health impaired.

Texas Administrative Code

TAC §231.613 Teacher of Adaptive Physical Education

- (a) An assignment for Teacher of Adaptive Physical Education is allowed with one of the following certificates.
 - (1) All-Level Health and Physical Education.
 - (2) All-Level Physical Education.
 - (3) Elementary Physical Education (Grades 1-8) (Grades 1-8 only).
 - (4) Grades 6-8--Physical Education (Grades 6-8 only).
 - (5) Physical Education: Early Childhood-Grade 12.
 - (6) Secondary Physical Education (Grades 6-12) (Grades 6-12 only).
 - (7) Special education certificate as specified in §231.611 of this title (relating to Special Education Teacher). This assignment requires necessary skills and knowledge in adaptive physical education. Evidence of necessary skills and knowledge in adaptive physical education must be documented through in-service records, seminar attendance records, or transcripts of college courses.
- (b) Other licensed professionals may be eligible to provide adaptive physical education services to students with disabilities under the scope of practice of the specific license held.

TAC §231.623. Special Education Counseling Services; Educational Diagnostician; Speech Therapy Services; an Vocational Adjustment Coordinator

- (a) Special Education Counseling Services.
 - (1) An assignment for Special Education Counseling Services is allowed with one of the following certificates.
 - (A) Counselor
 - (B) School Counselor (Early Childhood-Grade 12)
 - (C) Special Education Counselor
 - (D) Special Education Visiting Teacher
 - (E) Vocational Counselor
 - (2) Individuals certified or licensed to practice in other professions may be eligible to provide counseling services for students with disabilities under the scope of practice of the specific license held.
- (b) Educational Diagnostician.
 - (1) An assignment for Educational Diagnostician is allowed with an Educational Diagnostician certificate.
 - (2) Individuals certified or licensed to practice in other professions may be eligible to provide evaluative services for students with disabilities under the scope of practice of the specific license held.
- (c) Speech Therapy Services.
 - (1) An assignment for Speech Therapy Services is allowed with one of the following certificates.
 - (A) School Speech-Language Pathologist.
 - (B) Speech and Hearing Therapy.
 - (C) Speech and Language Therapy.
 - (2) Individuals licensed by the State Board of Examiners for Speech Language Pathology and Audiology also may provide speech therapy services to eligible students under the scope of practice of the specific license held.
- (d) Vocational Adjustment Coordinator.
 - (1) An assignment for Vocational Adjustment Coordinator is allowed with a Special Education certificate. This assignment requires 60 clock-hours of training appropriate for the assignment.
 - (2) A teacher in an assignment for Vocational Adjustment Coordinator will have three years from the date of assignment to complete the required training. *Source Note: The provisions of this §231.623 adopted to be effective August 15, 2013, 38 TexReg 5076; amended to be effective May 18, 2014, 39 TexReg 3707.*

§231.617. Teacher of Students with Visual Impairments

- (a) An assignment for Teacher of Students with Visual Impairments is allowed with one of the following certificates.
 - (1) Deficient Vision.
 - (2) Visually Handicapped.

- (1) Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12.
- (b) A teacher in an assignment for Teacher of Students with Visual Impairment must be available to students with visual impairments.

§231.619. Teacher of Students with Auditory Impairments

- (a) An assignment for Teacher of Students with Auditory Impairments is allowed with one of the following certificates.
- (1) Deaf and Severely Hard of Hearing.
 - (2) Hearing Impaired.
 - (3) Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12.
- (b) A teacher in an assignment for Teacher of Students with Auditory Impairments must be available to students with auditory impairments.
- (c) A teacher in an assignment for Teacher of Students with Auditory Impairments is not required to pass the Texas Assessment of Sign Communication (TASC) or the Texas Assessment of Sign Communication-American Sign Language (TASC-ASL) in order to be assigned to a classroom in which another communication method is used predominately. If this teacher completes certification requirements through a State Board for Educator Certification-approved educator preparation program in Texas, the program must have assessed proficiency in the communication method and verified it to be at an appropriate level. *Source Note: The provisions of this §231.619 adopted to be effective August 15, 2013, 38 TexReg 5076.*

TAC §231.645. Professional Support Personnel Requiring Other Professional License

A person may not be employed by a school district to perform services within the following professions unless the person holds the appropriate credential or license from the appropriate state agency for that profession. Educator certification is not required for a school district assignment to provide services that are within the scope of that profession.

- (1) Associate School Psychologist.
- (2) Audiologist.
- (3) Licensed Professional Counselor
- (4) Marriage and Family Therapist. As long as a person was employed by a school district before September 1, 2011, to perform marriage and family therapy, as defined by the Texas Occupations Code (TOC), §502.002, and remains employed by the same school district, the person is not required to hold a license as a marriage and family therapist to perform marriage and family therapy with that school district.
- (5) Nurse.
- (6) Occupational Therapist.
- (7) Physical Therapist.
- (8) Physician.
- (9) School Psychologist.
- (10) Social Worker.
- (11) Speech Language Pathologist. An assignment to provide Speech Therapy Services is allowed with a certificate authorized by the TOC, §401.054.

Source Note: The provisions of this §231.64 adopted to be effective May 18, 2014, 39 TexReg 3707.

TEC §29.304. Qualifications of Personnel

- (a) A student who is **deaf or hard of hearing** must have an education in which teachers, psychologists, speech therapists, progress assessors, administrators, and others involved in education understand the unique nature of deafness and the hard-of-hearing condition. A teacher of students who are deaf or hard of hearing either must be proficient in appropriate language modes or use an interpreter certified in appropriate language modes if certification is available.
- (b) Each school district shall employ or provide access to appropriate qualified staff with proficient communications skills, consistent with credentialing requirements, to fulfill the responsibilities of the school district, and shall make positive efforts to employ qualified individuals with disabilities.
- (c) Regular and special personnel who work with students who are deaf or hard of hearing must be adequately prepared to provide educational instruction and services to those students.

TEC §21.0485. Certification to Teach Students with Visual Impairments.

- (a) To be eligible to be issued a certificate to teach students with visual impairments, a person must:
- (1) complete either:

- (A) all course work required for that certification in an approved educator preparation program; or
- (B) an alternative educator certification program approved for the purpose by the board;
- (2) perform satisfactorily on each examination prescribed under Section 21.048 for certification to teach students with visual impairments, after completing the course work or program described by Subdivision (1); and
- (3) satisfy any other requirements prescribed by the board.
- (b) Subsection (a) does not apply to eligibility for a certificate to teach students with visual impairments, including eligibility for renewal of that certificate, if the application for the initial certificate was submitted on or before September 1, 2011.

§300.18 Highly qualified special education teacher.

- (a) **Requirements for special education teachers teaching core academic subjects.** For any public elementary or secondary school special education teacher teaching core academic subjects, the term **highly qualified** has the meaning given the term in section 9101 of the ESEA and 34 CFR 200.56, except that the requirements for highly qualified also--
 - (1) Include the requirements described in paragraph (b) of this section; and
 - (2) Include the option for teachers to meet the requirements of section 9101 of the ESEA by meeting the requirements of paragraphs (c) and (d) of this section.
- (b) **Requirements for special education teachers in general.**
 - (1) When used with respect to any public elementary school or secondary school special education teacher teaching in a State, highly qualified that--
 - (i) The teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, highly qualified means that the teacher meets the certification or licensing requirements, if any, set forth in the State's public charter school law;
 - (ii) The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
 - (iii) The teacher holds at least a bachelor's degree.
 - (2) A teacher will be considered to meet the standard in paragraph (b)(1)(i) of this section if that teacher is participating in an alternative route to certification program under which--
 - (i) The teacher--
 - (A) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;
 - (B) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;
 - (C) Assumes functions as a teacher only for a specified period of time not to exceed three years; and
 - (D) Demonstrates satisfactory progress toward full certification as prescribed by the State; and
 - (ii) The State ensures, through its certification and licensure process, that the provisions in paragraph (b)(2)(i) of this section are met.
 - (3) Any public elementary school or secondary school special education teacher teaching in a State, who is not teaching a core academic subject, is highly qualified if the teacher meets the requirements of paragraph (b)(1) or the requirements in (b)(1)(iii) and (b)(2) of this section.
- (c) **Requirements for special education teachers teaching to alternate achievement standards.** Subject to paragraph (e) of this section, when used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under 34 CFR 200.1(d), highly qualified means the teacher, whether new or not new to the profession, may either--
 - (1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or
 - (2) Meet the requirements of subparagraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of subparagraph (B) or (C) of section 9101(23) of the ESEA as applied to an

elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards, as determined by the State.

- (d) **Requirements for highly qualified special education teachers teaching multiple subjects.** When used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, highly qualified means that the teacher may either--
- (1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56(b) or (c);
 - (2) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR 200.56(c) which may include a single, high objective uniform State standard of evaluation (HOUSSE) covering multiple subjects; or
 - (3) In the case of a new special education teacher who teaches multiple subjects, and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c), which may include a single, high objective State standard of evaluation (HOUSSE) covering multiple subjects.
- (e) **Separate HOUSSE standards for special education teachers.** Provided that any adaptations of the State's HOUSSE would not establish a lower standard for the content knowledge requirements for special education teachers and meets all the requirements for a HOUSSE for regular education teachers—
- (1) A State may develop a separate HOUSSE for special education teachers; and
 - (2) The standards described in paragraph (e)(1) of this section may include single HOUSSE evaluations that cover multiple subjects.
- (f) **Rule of construction.** Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this section or part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular SEA or LEA employee to be highly qualified, or to prevent a parent from filing a complaint under §§300.151 through 300.153 about staff qualifications with the SEA as provided for under this part.
- (g) **Applicability of definition to ESEA; and clarification of new special education teacher.**
- (1) A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.
 - (2) For purposes of 300.18(d)(3), a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.
- (h) **Private school teachers not covered.** The requirements in this section do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by LEAs to provide equitable services to parentally-placed private school children with disabilities under §300.138. (Authority: 20 U.S.C. 1401(10))

Also reference TEA Guidance Qualifications at: <http://www.tea.state.tx.us/index2.aspx?id=2147492070> and http://tea.texas.gov/About_TEA/Laws_and_Rules/NCLB_and_ESEA/Highly_Qualified_Teachers/Highly_Qualified_Teachers/

Based on the December 10, 2015, passage of the ESSA (Every Student Succeeds Act), <http://www.ed.gov/essa>, schools are no longer required to comply with the HQ regulations effective 2016-2017 school year. All elements of ESSA go into effect 2017-18 school year. TEA Commissioner letter:

http://tea.texas.gov/About_TEA/News_and_Multimedia/Correspondence/TAA_Letters/Every_Student_Succeeds_Act/

TEC §21.005. High-Quality Teachers

The commissioner may by rule establish a statewide standard to be used to certify each school district that is preparing, training, and recruiting high-quality teachers in a manner consistent with the No Child Left Behind Act of 2001 (Pub. L. No. 107-110).

§300.207 Personnel development.

The LEA must ensure that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared, subject to the requirements of §300.156 (related to personnel qualifications) and section 2122 of the ESEA.

TEC §21.451 Staff Development Requirements.

(d) The staff development:

(1) may include training in:

(A) technology;

(B) conflict resolution;

(C) discipline strategies, including classroom management, district discipline policies, and the student code of conduct adopted under Section 37.001 and Chapter 37; and

(D) preventing, identifying, responding to, and reporting incidents of bullying; and

(2) subject to Subsection (e), must include training based on scientifically based research, as defined by Section 9101, No Child Left Behind Act of 2001 (20 U.S.C. Section 7801), that:

(A) relates to instruction of students with disabilities; and

(B) is designed for educators who work primarily outside the area of special education; and

(3) must include suicide prevention training that must be provided:

(A) on an annual basis, as part of a new employee orientation, to all new school district and open-enrollment charter school educators; and

(B) to existing school district and open-enrollment charter school educators on a schedule adopted by the agency by rule.

(d-1) The suicide prevention training required by Subsection (d)(3) must use a best practice-based program recommended by the Department of State Health Services in coordination with the agency under Section 161.325, Health and Safety Code.

(d-2) The suicide prevention training required by Subsection (d)(3) may be satisfied through independent review of suicide prevention training material that:

(1) complies with the guidelines developed by the agency; and

(2) is offered online.

(e) A school district is required to provide the training described by Subsection (d)(2) to an educator who works primarily outside the area of special education only if the educator does not possess the knowledge and skills necessary to implement the individualized education program developed for a student receiving instruction from the educator. A district may determine the time and place at which the training is delivered.

(f) In developing or maintaining the training required by Subsection (d)(2), a school district must consult with persons with expertise in research-based practices for students with disabilities. Persons who may be consulted under this subsection include colleges, universities, private and nonprofit organizations, regional education service centers, qualified district personnel, and any other persons identified as qualified by the district. This subsection applies to all training required by Subsection (d)(2), regardless of whether the training is provided at the campus or district level.

*The Perryton Special Education SSA will annually provide campus based **training** on implementation of the IEP. Annually the campus Principal will inform the Special Education Director of any request for training that cannot be performed by assigned district special education personnel. Documentation of training will be maintained by the campus principal including:*

a. Agenda with date and

b. Attendance list

c. Specialized training required by specific staff for a specific student will be handled individually and documented in the personnel file.

Teachers in the Perryton Special Education SSA have access to numerous training opportunities both inside the school district as well as at the Education Service Centers. As part of the decentralized function for Texas, Region 20 ESC is assigned to organize and conduct professional development (iLearning) that will facilitate access to the general curriculum. Three modules include: Early Childhood, Elementary and Secondary. They offer specific trainings and support to assist teachers and administrators with strategies and methods to ensure students with disabilities are not only provided access to the general curriculum, but are making academic progress. Specific training topics include (but are not limited to): Inclusion, Accommodations & Modifications, Co-Teaching, Differentiated Instruction & Brain Based Learning Strategies, and State Assessments.

<http://portal.esc20.net/portal/page/portal/esc20public/SpecialEducation/AGCHome>

TEC §37.0181 Professional Development Regarding Disciplinary Procedures.

- (a) Each principal or other appropriate administrator who oversees student discipline shall, at least once every three school years, attend professional development training regarding this subchapter, including training relating to the distinction between a discipline management technique used at the principal's discretion under Section 37.002(a) and the discretionary authority of a teacher to remove a disruptive student under Section 37.002(b).
- (b) Professional development training under this section may be provided in coordination with regional education service centers through the use of distance learning methods, such as telecommunications networks, and using available agency resources.

For professional development training resources (in addition to our ESC) see the following link:

<http://www.txbehaviorsupport.org/>

V. CURRICULUM FOR STUDENTS WITH DISABILITIES

Click link to review the Region 20 ESC Access to General Curriculum Statewide Function which TEA supports.
http://www.esc20.net/default.aspx?name=ci_se.agc.Home

The Perryton Special Education SSA has the responsibility for providing educational and related services to eligible students in the least restrictive environment. Students with disabilities shall have the opportunity to participate in educational programs and activities with non-disabled students to the maximum extent appropriate.

The Perryton Special Education SSA curriculum will enable each student to acquire knowledge and skills in the basic areas of learning commensurate with the student's needs and abilities. These skills may be attained in the general program of instruction or in a program of special education instruction, as determined by the Admission, Review, and Dismissal committee.

All students, regardless of special need or condition, will be provided a well-balanced curriculum. The Texas state standards are found in the TEKS – Texas Essential Knowledge and Skills. The TEKS represent core knowledge, skills, and competencies students should learn. Students with special needs shall be instructed in those same TEKS in a manner appropriate to their needs. The TEKS constitute a sound developmental sequence of instruction and their mastery should be the goal for all students, including students with disabilities. Although some students with disabilities will have different learning rates or different levels of mastery, the Perryton Special Education SSA must provide each student with disabilities the opportunity to make satisfactory progress in the essential knowledge and skills in a manner appropriate to the student's needs. If a student's disability is such that mastery of some or all of the TEKS is inappropriate for that student, the ARD/IEP committee has the responsibility to develop an appropriate scope and sequence of skills for that student and to modify/accommodate the method of instruction, pacing, and/or materials, as appropriate, to provide full opportunity for learning the TEKS.

- Identified special education students will follow the general education curriculum, consisting of the essential elements, when deemed appropriate by the ARD/IEP committee and reflected in the IEP.*
- Identified special education students will follow the general education curriculum with modification and/or special education support when deemed appropriate by the ARD/IEP committee and reflected in the IEP. Each identified special education student shall follow the IEP developed and approved by the ARD/IEP committee.*

Tutorials - *Students in special education programs will be eligible for tutorial services, but the tutorials will not replace other special services provided for the student.*

Textbooks - *State-adopted textbooks are available for identified students with disabilities' use, regardless of placement. State-adopted textbooks may be requested by the teacher of the student with disabilities, following local building procedures. Local Perryton Special Education SSA guidelines will be followed when textbooks are issued to identified students with disabilities. Students are responsible for the proper handling and return of a state-adopted textbook, which has been issued to the student. Consequences for improper use or return of a textbook will comply with local district procedures for all students.*

- A special education teacher may request teacher's manuals and other supplementary aids for state-adopted textbooks used by the identified students with disabilities assigned to the special education teacher. Local procedures for textbook acquisition will be followed in requesting teacher's manuals and aids.*
- Textbooks on Tape - The Perryton Special Education SSA makes available certain state-adopted textbooks and selected other books on tape for students with disabilities based on ARD/IEP committee recommendation.*
- Original sets of tapes are maintained in Content Mastery Centers.*

Scientifically Research Based Interventions/Strategies

- Based on IDEA 2004, the IEP now requires a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided.*
- Also based on IDEA 2004, prior to, or as a part of the referral process, the child must have been provided appropriate high-quality, research-based instruction in regular education settings, consistent with section*

1111(b)(8)(D) and (E) of the ESEA, including that the instruction was delivered by qualified personnel.

- *As a result, it is incumbent upon the special education department to continually evaluate the programs and strategies used by special education staff and to train staff on the use of scientifically research based interventions and programs to address the curriculum.*
- *The term “scientifically based research” means research that involves the application of rigorous, systematic and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs, and includes research that:*
 1. *employs systematic, empirical methods that draw on observation or experiment;*
 2. *involves rigorous data analyses that are adequate to test the state hypotheses and justify the general conclusions drawn;*
 3. *relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;*
 4. *is evaluated using experimental or quasi-experimental designs;*
 5. *ensures that experimental studies are presented in sufficient detail and clarity to allow for replication, and*
 6. *has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.*

VI. PEIMS – PUBLIC EDUCATION INFORMATION MANAGEMENT SYSTEM

§300.640 Annual report of children served - report requirement.

- (a) The SEA must annually report to the Secretary on the information required by section 618 of the Act at the times specified by the Secretary.**
- (b) The SEA must submit the report on forms provided by the Secretary.**

§300.641 Annual report of children served - information required in the report. *For all specific requirements the Perryton Special Education SSA will remain diligent in following requirements specified in the PEIMS manual provided annually by the Texas Education Agency. The Perryton Special Education SSA utilizes a computer information system to provide an efficient method of collecting and generating the student data necessary for special education program management. This comprehensive system provides a data bank of student-related information and generates required state and federal reports. It also provides other administrative information critical to program planning and management.*

TEC §42.006. Public Information Management System (PEIMS).

http://tea.texas.gov/Reports_and_Data/Data_Submission/PEIMS/PEIMS_-_Overview/

- (a) The Perryton Special Education SSA shall participate in the Public Education Information Management System (PEIMS) and shall provide through that system information required for the administration of this chapter and of other appropriate provisions of this code.
 - (a-1) The commissioner by rule shall require each school district and open-enrollment charter school to report through the Public Education Information Management System information regarding the number of students enrolled in the district or school who are identified as having dyslexia. The agency shall maintain the information provided in accordance with this subsection.
- (b) The Perryton Special Education SSA shall use a uniform accounting system adopted by the commissioner for the data required to be reported for the Public Education Information Management System.
- (c) Annually, the commissioner shall review the Public Education Information Management System and shall repeal or amend rules that require school districts to provide information through the Public Education Information Management System that is not necessary. In reviewing and revising the Public Education Information Management System, the commissioner shall develop rules to ensure that the system:
 - (1) provides useful, accurate, and timely information on student demographics and academic performance, personnel, and school district finances;
 - (2) contains only the data necessary for the legislature and the agency to perform their legally authorized functions in overseeing the public education system; and
 - (3) does not contain any information related to instructional methods, except as provided by Section 29.066 or required by federal law.
- (d) The commissioner's rules must ensure that the Public Education Information Management System links student performance data to other related information for purposes of efficient and effective allocation of scarce school resources, to the extent practicable using existing agency resources and appropriations.

VII. PBMAS – PERFORMANCE BASED MONITORING ANALYSIS SYSTEM

For continuous updated information, see the TEA website:

http://tea.texas.gov/Student_Testing_and_Accountability/PBMAS/

§300.157 Performance goals and indicators.

The State must--

- (a) Have in effect established goals for the performance of children with disabilities in the State that--
 - (1) Promote the purposes of this part, as stated in §300.1;
 - (2) Are the same as the State's objectives for progress by children in its definition of adequate yearly progress, including the State's objectives for progress by children with disabilities, under section 1111(b)(2)(C) of the ESEA, 20 U.S.C. 6311;
 - (3) Address graduation rates and dropout rates, as well as such other factors as the State may determine; and
 - (4) Are consistent, to the extent appropriate, with any other goals and academic standards for children established by the State;
- (b) Have in effect established performance indicators the State will use to assess progress toward achieving the goals described in paragraph (a) of this section, including measurable annual objectives for progress by children with disabilities under section 1111(b)(2)(C)(v)(II)(cc) of the ESEA, 20 U.S.C. 6311; and
- (c) Annually report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under paragraph (a) of this section, which may include elements of the reports required under section 1111(h) of the ESEA.

§300.229 Disciplinary information.

- (a) The State may require that Perryton Special Education SSA include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children.
- (b) The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child.
- (c) If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child. (Authority: 20 U.S.C. 1413(i))

§300.170 Suspension and expulsion rates. *(added here also from section 6 discipline)*

- (a) **General.** The SEA must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities--
 - (1) Among LEAs in the State; or
 - (2) Compared to the rates for nondisabled children within those agencies.
- (b) **Review and revision of policies.** If the discrepancies described in paragraph (a) of this section are occurring, the SEA must review and, if appropriate, revise (or require the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act. (Authority: 20 U.S.C. 1412(a)(22))

§300.173 Overidentification and disproportionality.

The State must have in effect, consistent with the purposes of this part and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in §300.8.

§300.646 Disproportionality.

(a) **General.** Each State that receives assistance under Part B of the Act, and the Secretary of the Interior, must provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State with respect to--

- (1) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) of the Act;
- (2) The placement in particular educational settings of these children; and
- (3) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

(b) **Review and revision of policies, practices, and procedures.** In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with paragraph (a) of this section, the State or the Secretary of the Interior must--

- (1) Provide for the review and, if appropriate revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of the Act.
- (2) Require any LEA identified under paragraph (a) of this section to reserve the maximum amount of funds under section 613(f) of the Act to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified under paragraph (a) of this section; and
- (3) Require the LEA to publicly report on the revision of policies, practices, and procedures described under paragraph (b)(1) of this section.

- *Data will be reviewed and areas of concern identified and addressed at the local campus with support from the special education department.*
- *Annual training for principals will be conducted by the evaluation staff to inform campuses of the special education eligibility procedures and criteria.*
- *This annual training will be in collaboration with the campus principal and incorporate the local campus intervention process. Any over identification or other important data information will be noted*
- *Local campuses will identify any additional areas of training needed and report to the principal.*
- *Evaluation procedures will be followed in order to accurately identify students with a disability.*

§300.211 Information for SEA.

The Perryton Special Education SSA must provide the SEA with information necessary to enable the SEA to carry out its duties under Part B of the Act, including, with respect to §§300.157 and 300.160, information relating to the performance of children with disabilities participating in programs carried out under Part B of the Act.

(Authority: 20 U.S.C. 1413(a)(7))

§300.213 Records regarding migratory children with disabilities.

The Perryton Special Education SSA must cooperate in the Secretary's efforts under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the States, health and educational information regarding those children.

(Authority: 20 U.S.C. 1413(a)(9))

Development of the Performance-Based Monitoring Analysis System (PBMAS)

Statutory changes, combined with a 2003 reorganization of the agency, resulted in a revised alignment of agency functions and an emphasis on a coordinated approach to agency monitoring. In this approach, the agency is moving toward an integration of several different agency evaluation and monitoring components, including: the new performance-based monitoring analysis system; federal program and fiscal compliance; the new state accountability system, including alternative education accountability (AEA) procedures; federal accountability provisions, including Adequate Yearly Progress; the Financial Integrity Rating System (FIRST); financial audits; complaints; due process hearings; governance; and other monitoring responsibilities such as those required by Civil Action 5281 and the Office of Civil Rights.

These changes also led to a new definition of agency monitoring: Monitoring is:

- 1) using a data-driven, performance-based model to observe, evaluate, and report on the public education system at the individual student group, campus, local education agency, regional, and statewide levels across diverse areas including program effectiveness, compliance with federal and state law and regulations, financial management, and data integrity for the purpose of assessing that student needs are being met;*
- 2) promoting diagnostic and evaluative systems in LEAs that are integrated with the agency's desk audit and intervention process; and*
- 3) relying on a research-based framework of interventions that ensure compliance and enhance student success.*

The development of the PBMAS is a dynamic and multi-year process. Ongoing development of PBMAS may include the addition of new indicators, revision of current indicators, and deletion of indicators that are no longer necessary. Factors independent from the PBMAS itself are also likely to have an impact on the future development of PBMAS. These factors include: New state accountability system; Reading Proficiency Test in English (RPTE) expansion; Carl D. Perkins Vocational and Technical Education Act and the Individuals with Disabilities Education Improvement Act (IDEA) reauthorizations; No Child Left Behind (NCLB) Act Interpretations; Changes to data collection processes; Legislation from a special session or regular legislative session; and Sunset review of the agency.

The Special Education Monitoring unit of Program Monitoring and Interventions develops and implements integrated program review processes for special education programs statewide that promote program effectiveness and ensure that state supervision and oversight requirements for special education programs are met as required by state and federal law.

The Division of Performance-Based Monitoring is responsible for developing performance-based indicators and elements that will facilitate a coordinated approach to the monitoring of local education agencies. The specific functions of the division include developing indicators, reviewing district and campus performance data, identifying risk areas, and coordinating with other agency divisions to ensure the effective implementation of a data-driven, risk-based monitoring system focused on improving student performance.

From the data contained in the PBMAS, the division also designs and maintains the annual Performance-Based Monitoring Analysis System Summary Report. This is a district-level report that includes specific data for each performance indicator in the PBMAS. A technical resource for understanding this summary report is the [PBMAS Manual](#).

The Division of Performance-Based Monitoring is also responsible for developing and reporting on a variety of data integrity indicators, including indicators to examine leaver/dropout records, disciplinary data, and student assessment data.

§300.120 Monitoring activities.

- (a) The SEA must carry out activities to ensure that §300.114 (LRE section 4 of this document) is implemented by each public agency.**
- (b) If there is evidence that the Perryton Special Education SSA makes placements that are inconsistent with §300.114, the TEA must--**
 - (1) Review the public agency's justification for its actions; and**
 - (2) Assist in planning and implementing any necessary corrective action. (Authority: 20 U.S.C. 1412(a)(5))**

TEC §29.001. Statewide Plan

The agency shall develop, and modify as necessary, a statewide design, consistent with federal law, for the delivery of services to children with disabilities in this state that includes rules for the administration and funding of the special education program so that a free appropriate public education is available to all of those children between the ages of three and 21. The statewide design shall include the provision of services primarily through school districts and shared services arrangements, supplemented by regional education service centers. The agency shall also develop and implement a statewide plan with programmatic content that includes procedures designed to:

- (5) allow the agency to effectively monitor and periodically conduct site visits of all school districts to ensure that rules adopted under this section are applied in a consistent and uniform manner, to ensure that districts are complying with those rules, and to ensure that annual statistical reports filed by the districts and not otherwise available through the Public Education Information Management System under Section 42.006, are accurate and complete;

TEC §29.010. Compliance

- (a) The TEA shall adopt and implement a comprehensive system for monitoring school district compliance with federal and state laws relating to special education. The monitoring system must provide for ongoing analysis of district special education data and of complaints filed with the agency concerning special education services and for inspections of school districts at district facilities. The agency shall use the information obtained through analysis of district data and from the complaints management system to determine the appropriate schedule for and extent of the inspection.
- (b) To complete the inspection, the agency must obtain information from parents and teachers of students in special education programs in the district.
- (c) The TEA shall develop and implement a system of sanctions for school districts whose most recent monitoring visit shows a failure to comply with major requirements of the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.), federal regulations, state statutes, or agency requirements necessary to carry out federal law or regulations or state law relating to special education.
- (d) For districts that remain in noncompliance for more than one year, the first stage of sanctions shall begin with annual or more frequent monitoring visits. Subsequent sanctions may range in severity up to the withholding of funds. If funds are withheld, the agency may use the funds to provide, through alternative arrangements, services to students and staff members in the district from which the funds are withheld.
- (e) The agency's complaint management division shall develop a system for expedited investigation and resolution of complaints concerning a district's failure to provide special education or related services to a student eligible to participate in the district's special education program.
- (f) This section does not create an obligation for or impose a requirement on a school district or open-enrollment charter school that is not also created or imposed under another state law or a federal law.

TEC §29.0011. PROHIBITED PERFORMANCE INDICATOR.

- (a) Notwithstanding Section 29.001(5), Section 29.010, or any other provision of this code, the commissioner or agency may not adopt or implement a performance indicator in any agency monitoring system, including the performance-based monitoring analysis system, that solely measures a school district's or open-enrollment charter school's aggregated number or percentage of enrolled students who receive special education services.
- (b) Notwithstanding Section 29.001(5), Section 29.010, or any other provision of this code, the commissioner or agency may not adopt or implement a performance indicator in any agency monitoring system, including the performance-based monitoring analysis system, that solely measures a school district's or open-enrollment charter school's aggregated number or percentage of enrolled students who receive special education services.
- (1) 20 U.S.C. Section 1418(d) and its implementing regulations to collect and examine data to determine whether significant disproportionality based on race or ethnicity is occurring in the state and in the school districts and open-enrollment charter schools in the state with respect to the:
- (A) identification of children as children with disabilities, including the identification of children as children with particular impairments;
- (B) placement of children with disabilities in particular educational settings; and
- (C) incidence, duration, and type of disciplinary actions taken against children with disabilities, including suspensions and expulsions; or
- (2) 20 U.S.C. Section 1416(a)(3)(C) and its implementing regulations to address in the statewide plan the percentage of school districts and open-enrollment charter schools with disproportionate representation of racial and ethnic groups in special education and related services and in specific disability categories that results from inappropriate identification.

TAC §89.1075. General Program Requirements and Local District Procedures.

- (a) The Perryton Special Education SSA 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). *The Perryton Special Education SSA will conduct folder audits annually to ensure training of staff on compliance documentation is carried out. The selection process (including number of folders and folder type and location) is determined by the special education director. Documentation of dissemination of the ARD Guide is in the student's eligibility folder. Also see the folder protocol guidelines in the FIE section 2.*

VIII. COLLABORATION WITH AGENCIES REGARDING MOUs

The Perryton Special Education SSA will follow the TEA Memorandum of Understanding with the agencies below.

- Early Transition MOU <http://tea.texas.gov/index2.aspx?id=2147494979>
- Foster Care System MOU:
http://tea.texas.gov/About_TEA/News_and_Multimedia/Correspondence/TAA_Letters/Importance_of_Maintaining_Educational_Stability_for_Children_and_Youth_in_the_Foster_Care_System/
- TAC §89.1100. Memorandum of Understanding on Coordination of Services to Disabled Persons, and
- TAC §89.1115. Memorandum of Understanding Concerning Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities.

TAC §89.1100. Memorandum of Understanding on Coordination of Services to Disabled Persons.

Clarification of financial and service responsibilities of the Texas Department of Human Services, the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, the Texas Rehabilitation Commission, the Texas Commission for the Blind, the Texas Commission for the Deaf, Texas Department of Protective and Regulatory Services, Texas Interagency Council on Early Childhood Intervention, and the Texas Education Agency related to disabled persons are contained in the Memorandum of Understanding on Coordination of Services to Disabled Persons, which is adopted by reference as a rule of the Texas Education Agency. The complete text of the memorandum of understanding may be found in the rules of the Texas Department of Human Services, 40 Texas Administrative Code (TAC) Chapter 72. A copy of the memorandum of understanding is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

TAC §89.1115. Memorandum of Understanding Concerning Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities.

<http://ritter.tea.state.tx.us/rules/tac/chapter089/ch089aa.html#division3> (89.1115 not updated by TEA - some agency names are incorrect)

- (a) Parties. The state agencies named in this subsection are parties to this memorandum of understanding (MOU) and will be collectively referred to as the "parties." The term "Health and Human Service (HHS) agencies" will refer to all parties except the Texas Education Agency, Texas Juvenile Probation Commission, and Texas Youth Commission.
- (1) Texas Education Agency (TEA);
 - (2) Texas Department of Human Services (TDHS);
 - (3) Texas Department of Mental Health and Mental Retardation (TDMHMR);
 - (4) Texas Department of Health (TDH);
 - (5) Texas Department of Protective and Regulatory Services (PRS);
 - (6) Texas Interagency Council on Early Childhood Intervention (ECI);
 - (7) Texas Commission on Alcohol and Drug Abuse (TCADA);
 - (8) Texas Juvenile Probation Commission (TJPC); and
 - (9) Texas Youth Commission (TYC).
- (b) Purpose. In accordance with Texas Education Code (TEC), §29.012(d), the purpose of this MOU is to:
- (1) establish the respective responsibilities of school districts and of residential facilities (RFs) for the provision of a free appropriate public education (FAPE), as required by the Individuals with Disabilities Education Act (IDEA)(20 USC §1400 et seq.) and its subsequent amendments, including each requirement for children with disabilities who reside in those facilities;
 - (2) coordinate regulatory and planning functions of the parties;
 - (3) establish criteria for determining when a public school will provide educational services;
 - (4) provide for appropriate educational space when education services will be provided at the residential facility;
 - (5) establish measures designed to ensure the safety of students and teachers; and
 - (6) provide for binding arbitration consistent with Texas Government Code, Chapter 2009, and Civil Practice and Remedies Code, §154.027.
- (c) Definitions. The following words and terms, when used in this MOU, shall have the following meaning, unless the context clearly indicates otherwise.

- (1) Consistent with TEC, §5.001(8), "residential facility" (RF) means:
 - (A) a facility operated by a state agency or political subdivision, including a child placement agency, that provides 24-hour custody or care of a person 22 years of age or younger, if the person resides in the facility for detention, treatment, foster care, or any non-educational purpose; and
 - (B) any person or entity that contracts with or is funded, licensed, certified, or regulated by a state agency or political subdivision to provide custody or care for a person under subparagraph (A) of this paragraph. RFs include, but are not limited to:
 - (i) child care facilities or institutions;
 - (ii) independent foster group homes providing basic, therapeutic or rehabilitative services;
 - (iii) independent foster family homes providing basic, therapeutic or rehabilitative services;
 - (iv) agency foster family/group homes verified by a child placing agency licensed by PRS;
 - (v) intermediate care facilities for individuals with intellectual disabilities (ICFs-IID);
 - (vi) psychiatric treatment centers;
 - (vii) therapeutic camps or ranches;
 - (viii) residential treatment centers licensed by PRS;
 - (ix) nursing facilities;
 - (x) TYC halfway houses and contract facilities;
 - (xi) emergency shelters;
 - (xii) hospitals;
 - (xiii) juvenile pre-adjudication detention facilities;
 - (xiv) juvenile post-adjudication secure correctional facilities;
 - (xv) residential facilities funded and/or licensed by TCADA;
 - (xvi) settings other than the student's natural or adoptive home in which residential services are provided in programs authorized by the Social Security Act, §1915(c); and
 - (xvii) state hospitals, state schools, and state centers operated by TDMHMR.
- (2) "Student with a disability" means an individual who is eligible to receive special education and related services in accordance with IDEA and its implementing regulations, Code of Federal Regulations, Title 34, §§300.1 et seq., and state laws and rules, including, without limitation, TEC, Chapter 29, and Chapter 89 of this title (relating to Adaptations for Special Populations).
- (3) Consistent with 20 USC §1401(8), "free appropriate public education" (FAPE) means special education and related services that:
 - (A) are provided at public expense, under public supervision and direction, and without charge;
 - (B) meet the standards of TEA;
 - (C) include preschool, elementary, or secondary school education; and
 - (D) are provided in conformity with the student's individualized education program (IEP).
- (4) Consistent with 20 U. S. C. §1401(15), "local educational agency" (LEA) means any public authority, institution, or agency having administrative control and direction of a public elementary or secondary school, including a public charter school that is established as an LEA under state law.
- (d) Terms of MOU. The parties agree to the following terms:
 - (1) The responsibilities of LEAs and RFs related to the provision of a FAPE to students with disabilities who reside in RFs are established as follows.
 - (A) LEAs must provide or ensure the provision of a FAPE to students with disabilities residing in RFs in accordance with IDEA, applicable federal regulations, and state laws and rules.
 - (i) Except as provided in paragraph (2) of this subsection, an LEA must provide or ensure the provision of a FAPE for a student with a disability residing in an RF located in the geographical area served by that LEA.
 - (ii) If an LEA places a student with a disability in an RF for educational purposes, the placing LEA must provide or ensure the provision of a FAPE to the student .
 - (B) Not later than the third day after the date a person 22 years of age or younger is placed in an RF, the RF must provide notification in accordance with TEC, §29.012(a), as follows:
 - (i) if the person placed in the RF is three years of age or older, the RF must notify the LEA in which the RF is located, unless the RF is an open-enrollment charter school or the RF has been designated as an LEA (e.g., TYC correctional facilities, Texas School for the Deaf, the University of Texas Medical Branch); or
 - (ii) if the person placed in the RF is younger than three years of age, the RF must notify a local early childhood intervention program in the area in which the RF is located.
 - (2) Regulatory and planning functions of the parties are coordinated as follows.

- (A) The parties will require LEAs and RFs to:
- (i) share, within a reasonable period of time and to the extent permitted by applicable statutes and regulations, all appropriate records and relevant information relating to a student with a disability. This subsection does not authorize the LEA to modify requirements for admission and enrollment into an LEA as set forth in TEC, Chapter 25. The records and information to be shared may include, but are not limited to:
 - (I) birth certificate or other identifying document that proves the student's age;
 - (II) medical history and medical records, including current immunization records and a history of infectious disease (e.g., Hepatitis B, tuberculosis), including a description of any behavioral characteristics related to the transmission of such disease;
 - (III) social history;
 - (IV) vision and hearing screening and evaluation;
 - (V) evaluation reports, including psychological, educational, related service, assistive technology and vocational evaluations, and behavioral assessments;
 - (VI) treatment plan of care or service;
 - (VII) educational history (e.g., previous educational placement information);
 - (VIII) any relevant court orders (e.g., orders related to placement in an RF, guardianship or conservatorship, or court-ordered services);
 - (IX) information regarding a student's movement from an RF to a subsequent residence, including but not limited to the date the student left the RF and the location of the student's subsequent residence; and
 - (X) name and phone number of contact persons representing the RF and the LEA; and
 - (ii) coordinate a student's individualized education program (IEP) and treatment plan of care or service. Coordination between an LEA and RF includes but is not limited to communication about responsibilities and timelines related to the development and implementation of the IEP and treatment plan, including permanency planning.
- (B) TEA will require LEAs to provide:
- (i) the name and phone number of the contact person representing the RF to the surrogate parent, upon assignment of the surrogate parent;
 - (ii) the name and phone number of the surrogate parent, upon assignment of the surrogate parent, to the contact person representing the RF; and
 - (iii) designation and training of surrogate parents in accordance with §89.1047 of this title (relating to Procedures for Surrogate and Foster Parents).
- (C) TYC and the HHS agencies will provide the following notifications to TEA.
- (i) TYC and the HHS agencies, other than PRS, will notify TEA when an RF opens, closes, expands, or reduces its capacity to provide services, if the notifying agency expects such action will have a significant effect on one or more LEAs. The notice will be provided to TEA before the RF opens, closes, expands, or reduces its capacity to provide services, or as soon thereafter as the notifying agency becomes aware of the action. If an RF is closing, the notifying TYC or HHS agency will request that the RF attempt to obtain any consent necessary to release to TEA and an LEA, information about a student with a disability residing in the RF, including the student's name, date of birth, social security number, disability, and name of the LEA to which the student will be moving. TEA will notify the affected LEA of the expected action so the LEA can adjust its capacity to serve students with disabilities.
 - (ii) PRS will provide TEA with a copy of the notice required by Texas Human Resources Code, §42.0461(a)(2). Additionally, PRS and TEA will explore possible use of PRS' Child Care Licensing Automation Support Services management system to generate information that may assist TEA in its effort to notify LEAs when an RF opens, closes, expands, or reduces its capacity to provide services.
- (3) Criteria for determining when a public school will provide educational services are established as follows.
- (A) TEA will ensure that the local school district provides a FAPE to all eligible students with disabilities, in the least restrictive environment (LRE), to the maximum extent appropriate, to meet the individual educational needs of the student as determined by a duly-constituted admission, review, and dismissal (ARD) committee, and in accordance with §89.1001 of this title (relating to Scope and Applicability).

- (B) The student's ARD committee must determine the appropriate educational placement for the student, considering all available information regarding the educational needs of the student, and including the non-educational needs that may restrict the ability of the LEA to serve the student on a public school campus or other instructional setting. These non-educational needs could include the student's health and safety (e.g. substance abuse), and/or the student's placement in a restrictive RF program (e.g., juvenile incarceration or restrictive court-ordered placements). The ARD committee's determination must be individualized based on student need and not made on a categorical basis, such as the student's disability or residence in an RF. Further, ARD committees must not determine educational placement on the basis of what is most convenient to LEAs or RFs.
- (4) When educational services will be provided at an RF, appropriate educational space will be determined as follows.
- (A) The ARD committee must determine whether space available at the RF is appropriate for the provision of a FAPE. This determination must be based on the individual student's needs and the RF's available space.
- (B) An ARD committee must find alternative locations for providing educational services if the ARD committee or RF determines that the RF has no appropriate available space.
- (5) Measures designed to ensure the safety of students and teachers are established as follows.
- (A) The parties will require RFs and LEAs to agree in writing to the staffing levels that will be maintained by both the RF and the LEA to ensure the safety of students and teachers while educational services are provided at an RF.
- (B) TYC, TJPC, and HHS agencies will require RFs to communicate to LEA staff applicable safety, emergency, and security procedures to be followed while educational services are provided at an RF.
- (6) Disputes concerning the implementation of this MOU will be resolved as follows.
- (A) Local disputes. Resolution of disputes concerning implementation of this MOU between LEAs or between an LEA and an RF shall first be attempted at the local level. The specific issues involved in the dispute and possible solutions shall be identified and referred to local personnel authorized to make decisions necessary to resolve the dispute. If resolution is not reached after a reasonable period of time (not to exceed 45 calendar days unless the disputing entities agree otherwise), the LEA shall refer (and the RF may refer) the dispute to TEA for further negotiations toward a mutually agreeable resolution. TEA will contact the disputing entities and set up a meeting for this purpose. Local entities referring disputes to TEA shall identify:
- (i) the nature of the dispute; (ii) any resolutions agreed upon; (iii) the issues that remain unresolved; and (iv) the contact persons representing the disputing entities.
- (B) State agency disputes. Resolution of disputes concerning implementation of this MOU between two or more parties must first be attempted at the staff level. If resolution is not reached after a reasonable period of time (not to exceed 45 calendar days unless the disputing parties agree otherwise), the disputing parties will refer the dispute to their respective executive officers, or their designees for further negotiation. The appropriate state officials shall meet to seek resolution of the dispute.
- (i) Mediation. If the chief executive officers of the disputing parties determine that the dispute cannot be resolved at their level, the disputing parties may pursue resolution through the use of mediation pursuant to the Governmental Dispute Resolution Act, Texas Government Code, Chapter 2009.
- (ii) Arbitration. If the disputing parties do not agree to pursue resolution of their dispute through mediation, or if mediation does not result in a resolution of their dispute, the disputing parties will participate in binding arbitration consistent with Texas Government Code, Chapter 2009, and Texas Civil Practice and Remedies Code, §154.027.
- (7) Other terms of this MOU.
- (A) This MOU shall be signed by the executive officers of the participating agencies and shall be effective upon signature by all.
- (B) This MOU may be considered for expansion, modification, or amendment upon mutual agreement of the executive officers of the participating agencies.
- (C) In the event that federal and/or state laws should be amended, federally interpreted, or judicially interpreted so as to render continued implementation of this MOU unreasonable or impossible, the participating agencies may agree to amend or terminate this MOU.

The TEA has worked collaboratively with several agencies to develop memorandum of understandings (MOU) or agreement memorandums (AM) that will assist in the coordination with the numerous state agencies in providing services to students with disabilities.

- a. coordination between ECI, DARS and TEA*
- b. interagency coordination of transition services to students with disabilities (coordination between TCB, TDHS, TDMHMR, TEA, TEC, TRC, and TDPRS) – currently there is no longer an MOU, however, there is an Interagency Letter of Agreement signed and dated 3/23/2005 by Shirley J. Neeley, Commissioner of Education, TEA*
- c. interagency coordination of special education services to students with disabilities in residential care facilities TAC §89.1115. (coordination between TEA, TDHS, TDMHMR, TDH, TDPRS, ECI, TCADA, TJPC, and TYC.) Printed on previous pages.*
- d. Memorandum of Understanding on Coordination of Services to Disabled Persons. TAC §89.1100 (Printed on previous pages)*
- e. Texas School for the Deaf Memorandum of Understanding, TEC §29.315 and MOU between TEA and Texas School for the Deaf §97.1011*
- f. Texas School for the Blind and Visually Impaired Memorandum of Understanding §97.1012*

IX. TRANSFER OF ASSISTIVE TECHNOLOGY DEVICES

TEC §30.0015. Transfer of Assistive Technology Devices.

(a) In this section:

- (1) "Assistive technology device" means any device, including equipment or a product system, that is used to increase, maintain, or improve functional capabilities of a student with a disability.
- (2) "Student with a disability" means a student who is eligible to participate in a school district's special education program under Section 29.003.
- (3) "Transfer" means the process by which a school district that has purchased an assistive technology device may sell, lease, or loan the device for the continuing use of a student with a disability changing the school of attendance in the district or leaving the district.

(b) The TEA by rule shall develop and annually disseminate standards for a school district's transfer of an assistive technology device to an entity listed in this subsection when a student with a disability using the device changes the school of attendance in the district or ceases to attend school in the district that purchased the device and the student's parents, or the student if the student has the legal capacity to enter into a contract, agrees to the transfer. The device may be transferred to:

- (1) the school or school district in which the student enrolls;
- (2) a state agency, including the Texas Rehabilitation Commission and the Texas Department of Mental Health and Mental Retardation, that provides services to the student following the student's graduation from high school; or
- (3) the student's parents, or the student if the student has the legal capacity to enter into a contract.

(c) The standards developed under this section must include:

- (1) a uniform transfer agreement to convey title to an assistive technology device and applicable warranty information;
- (2) a method for computing the fair market value of an assistive technology device, including a reasonable allowance for use; and
- (3) a process to obtain written consent by the student's parents, or the student where appropriate, to the transfer.

Parent indicates informed consent by written signature on the TEA - Uniform Transfer Agreement or locally developed form. See also the OSEP Letter to Goodman (June 21, 1998) and 34 CFR §80.32 EDGAR regulation governing equipment.

(d) This section does not alter any existing obligation under federal or state law to provide assistive technology devices to students with disabilities.

TAC §89.1056. Transfer of Assistive Technology Devices.

(a) Unless otherwise specifically defined in this section, the terms used in this section shall have the meanings ascribed to such terms in Texas Education Code (TEC), §30.0015, (Transfer of Assistive Technology Devices).

(b) A transfer of an assistive technology device (ATD) pursuant to TEC, §30.0015, shall be in accordance with a transfer agreement which incorporates the standards described in TEC, §30.0015(c), and which includes, specifically, the following.

- (1) The transferor and transferee must represent and agree that the terms of the transfer are based on the fair market value of the ATD, determined in accordance with generally accepted accounting principles.
- (2) The informed consent of the parent of the student with a disability for whom the ATD is being transferred must be obtained before the transfer of an ATD pursuant to TEC, §30.0015. The procedures employed by a school district in obtaining such informed consent shall be consistent with the procedures employed by the district to obtain parental consent under 34 Code of Federal Regulations (CFR), §300.300. If the student has the legal capacity to enter into a contract, the informed consent may be obtained from the student. Consistent with 34 CFR, §300.505(c), informed parental or adult student consent need not be obtained if the school district can demonstrate that it has taken reasonable measures to obtain that consent, and the student's parent or the adult student has failed to respond. To meet the reasonable measures requirement, the school district must use procedures consistent with those described in 34 CFR, §300.322(d).

- (3) If the transfer is a sale, then the sale of the ATD shall be evidenced by a "Uniform Transfer Agreement" (UTA) which includes the following:
 - (A) the names of the transferor and the transferee (which may be any individual or entity identified in TEC, §30.0015(b));
 - (B) the date of the transfer;
 - (C) a description of the ATD being transferred;
 - (D) the terms of the transfer (including the transfer of warranties, to the extent applicable); and
 - (E) the signatures of authorized representatives of both the transferor and the transferee.
- (c) The Texas Education Agency shall annually disseminate to school districts the standards for a school district's transfer of an ATD pursuant to TEC, §30.0015.
- (d) Nothing in this section or in TEC, §30.0015, shall:
 - (1) alter any existing obligation under federal or state law to provide ATDs to students with disabilities;
 - (2) require a school district to transfer an ATD to any person or entity;
 - (3) limit a school district's right to sell, lease, loan, or otherwise convey or dispose of property as authorized by federal or state laws, rules, or regulations; or
 - (4) authorize any transfer of an ATD that is inconsistent with any restriction on transferability imposed by the manufacturer or developer of the ATD or applicable federal or state laws, rules, or regulations.

Click below to review the Assistive Technology Region 4 ESC Leadership Function/Project which TEA supports. <http://www.texasat.net/>

X. FUNDING

A. Federal Funds

§300.226 Early intervening services.

- (a) **General.** An LEA may not use more than 15 percent of the amount the LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the LEA pursuant to §300.205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who have not been identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.
- (b) **Activities.** In implementing coordinated, early intervening services under this section, the Perryton Special Education SSA may carry out activities that include--
- (1) Professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and
 - (2) Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.
- (c) **Construction.** Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability.
- (d) **Reporting.** Each LEA that develops and maintains coordinated, early intervening services under this section must annually report to the SEA on--
- (1) The number of children served under this section who received early intervening services; and
 - (2) The number of children served under this section who received early intervening services and subsequently receive special education and related services under Part B of the Act during the preceding two year period.
- (e) **Coordination with ESEA.** Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section. (Authority: 20 U.S.C. 1413(f))

§300.162 Supplementation of State, local, and other Federal funds.

- (a) **Expenditures.** Funds paid to a State under this part must be expended in accordance with all the provisions of this part.
- (b) **Prohibition against commingling.**
- (1) Funds paid to a State under this part must not be commingled with State funds.
 - (2) The requirement in paragraph (b)(1) of this section is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of funds paid to a State under this part. Separate bank accounts are not required. (See 34 CFR 76.702 (Fiscal control and fund accounting procedures)).
- (c) **State-level nonsupplanting.**
- (1) Except as provided in §300.202, funds paid to a State under Part B of the Act must be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of the SEA or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act, and in no case to supplant those Federal, State, and local funds.
 - (2) If the State provides clear and convincing evidence that all children with disabilities have available to them FAPE, the Secretary may waive, in whole or in part, the requirements of paragraph (c)(1) of this section if the Secretary concurs with the evidence provided by the State under §300.164.

§300.163 Maintenance of State financial support.

- (a) **General.** A State must not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.
- (b) **Reduction of funds for failure to maintain support.** The Secretary reduces the allocation of funds under section 611 of the Act for any fiscal year following the fiscal year in which the State fails to comply with the requirement of paragraph (a) of this section by the same amount by which the State fails to meet the requirement.
- (c) **Waivers for exceptional or uncontrollable circumstances.** The Secretary may waive the requirement of paragraph (a) of this section for a State, for one fiscal year at a time, if the Secretary determines that--
 - (1) Granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or
 - (2) The State meets the standard in §300.164 for a waiver of the requirement to supplement, and not to supplant, funds received under Part B of the Act.
- (d) **Subsequent years.** If, for any fiscal year, a State fails to meet the requirement of paragraph (a) of this section, including any year for which the State is granted a waiver under paragraph (c) of this section, the financial support required of the State in future years under paragraph (a) of this section shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support. (Authority: 20 U.S.C. 1412(a)(18))

§300.164 Waiver of requirement regarding supplementing and not supplanting with Part B funds.

- (a) Except as provided under §§300.202 through 300.205, funds paid to a State under Part B of the Act must be used to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of SEAs or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act and in no case to supplant those Federal, State, and local funds. A State may use funds it retains under §300.704(a) and (b) without regard to the prohibition on supplanting other funds.
- (b) If a State provides clear and convincing evidence that all eligible children with disabilities throughout the State have FAPE available to them, the Secretary may waive for a period of one year in whole or in part the requirement under §300.162 (regarding State-level nonsupplanting) if the Secretary concurs with the evidence provided by the State.
- (c) If a State wishes to request a waiver under this section, it must submit to the Secretary a written request that includes--
 - (1) An assurance that FAPE is currently available, and will remain available throughout the period that a waiver would be in effect, to all eligible children with disabilities throughout the State, regardless of the public agency that is responsible for providing FAPE to them. The assurance must be signed by an official who has the authority to provide that assurance as it applies to all eligible children with disabilities in the State;
 - (2) All evidence that the State wishes the Secretary to consider in determining whether all eligible children with disabilities have FAPE available to them, setting forth in detail--
 - (i) The basis on which the State has concluded that FAPE is available to all eligible children in the State; and
 - (ii) The procedures that the State will implement to ensure that FAPE remains available to all eligible children in the State, which must include--
 - (A) The State's procedures under §300.111 for ensuring that all eligible children are identified, located and evaluated;
 - (B) The State's procedures for monitoring public agencies to ensure that they comply with all requirements of this part;
 - (C) The State's complaint procedures under §§300.151 through 300.153; and
 - (D) The State's hearing procedures under §§300.511 through 300.516 and §§300.530 through 300.536;
 - (3) A summary of all State and Federal monitoring reports, and State complaint decisions (see §§300.151 through 300.153) and hearing decisions (see §§300.511 through 300.516 and §§300.530 through 300.536), issued within three years prior to the date of the State's request for a waiver under this section, that includes any finding that FAPE has not been available to one or more eligible children, and evidence that FAPE is now available to all children addressed in those reports or decisions; and

- (4) Evidence that the State, in determining that FAPE is currently available to all eligible children with disabilities in the State, has consulted with the State advisory panel under §300.167.
- (d) If the Secretary determines that the request and supporting evidence submitted by the State makes a **prima facie** showing that FAPE is, and will remain, available to all eligible children with disabilities in the State, the Secretary, after notice to the public throughout the State, conducts a public hearing at which all interested persons and organizations may present evidence regarding the following issues:
- (1) Whether FAPE is currently available to all eligible children with disabilities in the State.
 - (2) Whether the State will be able to ensure that FAPE remains available to all eligible children with disabilities in the State if the Secretary provides the requested waiver.
- (e) Following the hearing, the Secretary, based on all submitted evidence, will provide a waiver, in whole or in part, for a period of one year if the Secretary finds that the State has provided clear and convincing evidence that FAPE is currently available to all eligible children with disabilities in the State, and the State will be able to ensure that FAPE remains available to all eligible children with disabilities in the State if the Secretary provides the requested waiver.
- (f) A State may receive a waiver of the requirement of section 612(a)(18)(A) of the Act and §300.164 if it satisfies the requirements of paragraphs (b) through (e) of this section.
- (g) The Secretary may grant subsequent waivers for a period of one year each, if the Secretary determines that the State has provided clear and convincing evidence that all eligible children with disabilities throughout the State have, and will continue to have throughout the one-year period of the waiver, FAPE available to them.

Subpart C – LEA Eligibility

§300.202 Use of amounts.

- (a) **General.** Amounts provided to the Perryton Special Education SSA under Part B of the Act--
- (1) Must be expended in accordance with the applicable provisions of this part;
 - (2) Must be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with paragraph (b) of this section; and
 - (3) Must be used to supplement State, local, and other Federal funds and not to supplant those funds.
- (b) **Excess cost requirement.**
- (1) **General.**
 - (i) The excess cost requirement prevents the Perryton Special Education SSA from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a child with a disability, subject to paragraph (b)(1)(ii) of this section.
 - (ii) The excess cost requirement does not prevent the Perryton Special Education SSA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the ages 3, 4, 5, 18, 19, 20, or 21, if no local or State funds are available for nondisabled children of these ages. However, the Perryton Special Education SSA must comply with the nonsupplanting and other requirements of this part in providing the education and services for these children.
 - (2) (i) An LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of the Act are used.
 - (ii) The amount described in paragraph (b)(2)(i) of this section is determined in accordance with the definition of **excess costs** in §300.16. That amount may not include capital outlay or debt service.
 - (3) If two or more LEAs jointly establish eligibility in accordance with §300.223, the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of excess costs in §300.16 in those agencies for elementary or secondary school students, as the case may be. (Authority: 20 U.S.C. 1413(a)(2)(A))

§300.16 Excess costs. **Excess costs** means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting--

- (a) Amounts received--
- (1) Under Part B of the Act;
 - (2) Under Part A of title I of the ESEA; and

- (3) Under Parts A and B of title III of the ESEA; and
- (b) Any State or local funds expended for programs that would qualify for assistance under any of the parts described in paragraph (a) of this section, but excluding any amounts for capital outlay or debt service. (see Appendix A to Part 300 for an example of how excess cost must be calculated) (Authority: 20 U.S.C. 1401(8))

Excess Cost:

<http://tea.texas.gov/index2.aspx?id=2147499857>

§300.221 Notification of LEA and State agency in case of ineligibility.

If the SEA determines that an LEA or State agency is not eligible under Part B of the Act, then the SEA must—

- (a) Notify the LEA or State agency of that determination; and
- (b) Provide the LEA or State agency with reasonable notice and an opportunity for a hearing. (Authority: 20 U.S.C. 1413(c))

§300.222 LEA and State agency compliance.

- (a) **General.** If the SEA, after reasonable notice and an opportunity for a hearing, finds that an LEA or State agency that has been determined to be eligible under this subpart is failing to comply with any requirement described in §§300.201 through 300.213, the SEA must reduce or must not provide any further payments to the LEA or State agency until the SEA is satisfied that the LEA or State agency is complying with that requirement.
- (b) **Notice requirement.** Any State agency or LEA in receipt of a notice described in paragraph (a) of this section must, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this section to the attention of the public within the jurisdiction of the agency.
- (c) **Consideration.** In carrying out its responsibilities under this section, each SEA must consider any decision resulting from a hearing held under §§300.511 through 300.533 that is adverse to the LEA or State agency involved in the decision. (Authority: 20 U.S.C. 1413(d))

§300.223 Joint establishment of eligibility.

- (a) **General.** An SEA may require an LEA to establish its eligibility jointly with another LEA if the SEA determines that the LEA will be ineligible under this subpart because the agency will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.
- (b) **Charter school exception.** An SEA may not require a charter school that is an LEA to jointly establish its eligibility under paragraph (a) of this section unless the charter school is explicitly permitted to do so under the State's charter school statute.
- (c) **Amount of payments.** If an SEA requires the joint establishment of eligibility under paragraph (a) of this section, the total amount of funds made available to the affected LEAs must be equal to the sum of the payments that each LEA would have received under §300.705 if the agencies were eligible for those payments. (Authority: 20 U.S.C. 1413(e)(1) and (2))

§300.203 Maintenance of effort.

- (a) **General.** Except as provided in §§300.204 and 300.205, funds provided to Perryton Special Education SSA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.
- (b) **Standard.**
- (1) Except as provided in paragraph (b)(2) of this section, the SEA must determine that an LEA complies with paragraph (a) of this section for purposes of establishing the LEA's eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per-capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:
- (i) Local funds only.
- (ii) The combination of State and local funds.
- (2) An LEA that relies on paragraph (b)(1)(i) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at

least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in paragraph (b)(1)(i) of this section was used to establish its compliance with this section.

- (3) The SEA may not consider any expenditures made from funds provided by the Federal Government for which the SEA is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the SEA in determining an LEA's compliance with the requirement in paragraph (a) of this section. (Authority: 20 U.S.C. 1413(a)(2)(A))

*Below is the link to the MOE announcement letter from TEA regarding IDEA-B LEA MOE compliance determinations. TEA has decided to issue compliance determinations beginning with fiscal year 2015. TEA will use FY 2014 data from the Public Education Information Management System to establish a baseline for each LEA. <http://www.tea.state.tx.us/index4.aspx?id=25769807941>
http://tea.texas.gov/Finance_and_Grants/Grants/Federal_Fiscal_Compliance_and_Reporting/NCLB_Fiscal_Compliance/NCLB_LEA_Maintenance_of_Effort/*

§300.204 Exception to maintenance of effort.

Notwithstanding the restriction in §300.203(a), the Perryton Special Education SSA may reduce the level of expenditures by the Perryton Special Education SSA under Part B of the Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following:

- (a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.
- (b) A decrease in the enrollment of children with disabilities.
- (c) The termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child --
- (1) Has left the jurisdiction of the agency;
 - (2) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or
 - (3) No longer needs the program of special education.
- (d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.
- (e) The assumption of cost by the high cost fund operated by the SEA under §300.704(c). (20 U.S.C. 1413(a)(2)(B)) HCF application information: <http://tea.texas.gov/index2.aspx?id=2147490628>

§300.205 Adjustment to local fiscal efforts in certain fiscal years.

- (a) **Amounts in excess.** Notwithstanding §300.202(a)(2) and (b) and §300.203(a), and except as provided in paragraph (d) of this section and §300.230(e)(2), for any fiscal year for which the allocation received by an LEA under section §300.705 exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by §300.203(a) by not more than 50 percent of the amount of that excess.
- (b) **Use of amounts to carry out activities under ESEA.** If the Perryton Special Education SSA exercises the authority under paragraph (a) of this section, the Perryton Special Education SSA must use an amount of local funds equal to the reduction in expenditures under paragraph (a) of this section to carry out activities that could be supported with funds under the ESEA regardless of whether the Perryton Special Education SSA is using funds under the ESEA for those activities.
- (c) **State prohibition.** Notwithstanding paragraph (a) of this section, if an SEA determines that an LEA is unable to establish and maintain programs of FAPE that meet the requirements of section 613(a) of the Act and this part or the SEA has taken action against the LEA under section 616 of the Act and subpart F of these regulations, the SEA must prohibit the LEA from reducing the level of expenditures under paragraph (a) of this section for that fiscal year.
- (d) **Special rule.** The amount of funds expended by Perryton Special Education SSA for early intervening services under §300.226 shall count toward the maximum amount of expenditures that the Perryton Special Education SSA may reduce under paragraph (a) of this section. (Authority: 20 U.S.C. 1413(a)(2)(C))

§300.206 Schoolwide programs under title I of the ESEA.

- (a) **General.** Notwithstanding the provisions of §§300.202 and 300.203 or any other provision of Part B of the Act, an Perryton Special Education SSA may use funds received under Part B of the Act for any fiscal year to carry out a schoolwide program under section 1114 of the ESEA, except that the amount used in any schoolwide program may not exceed--
- (i) The amount received by the Perryton Special Education SSA under Part B of the Act for that fiscal year; divided by
 - (ii) The number of children with disabilities in the jurisdiction of the Perryton Special Education SSA; and multiplied by
- (2) The number of children with disabilities participating in the schoolwide program.
- (b) **Funding conditions.** The funds described in paragraph (a) of this section are subject to the following conditions:
- (1) The funds must be considered as Federal Part B funds for purposes of the calculations required by §300.202(a)(2) and (a)(3).
 - (2) The funds may be used without regard to the requirements of §300.202(a)(1).
- (c) **Meeting other Part B requirements.** Except as provided in paragraph (b) of this section, all other requirements of Part B of the Act must be met by an LEA using Part B funds in accordance with paragraph (a) of this section, including ensuring that children with disabilities in schoolwide program schools--
- (1) Receive services in accordance with a properly developed IEP; and
 - (2) Are afforded all of the rights and services guaranteed to children with disabilities under the Act.
- (Authority: 20 U.S.C. 1413(a)(2)(D))

§300.208 Permissive use of funds.

- (a) **Uses.** Notwithstanding §§300.202, 300.203(a), and §300.162(b), funds provided to an LEA under Part B of the Act may be used for the following activities:
- (1) **Services and aids that also benefit nondisabled children.** For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more nondisabled children benefit from these services.
 - (2) **Early intervening services.** To develop and implement coordinated, early intervening educational services in accordance with §300.226.
 - (3) **High cost education and related services.** To establish and implement cost or risk sharing funds, consortia, or cooperatives for the LEA itself, or for LEAs working in a consortium of which the LEA is a part, to pay for high cost special education and related services.
- (b) **Administrative case management.** The Perryton Special Education SSA may use funds received under Part B of the Act to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of children with disabilities, that is needed for the implementation of those case management activities.
- (Authority: 20 U.S.C. 1413(a)(4))

B. State Funds *(always watch for legislative updates)*

TAC §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 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).
- (b) State special education funds must 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 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 divided by 30 to

determine the full-time equivalents. Special education full-time equivalents generated are deducted from the school district's ADA for purposes of the regular education allotment.

- (d) The receipt of special education funds is 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). 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 be enrolled on the district home or regional day school campus and must 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 be based on the average daily attendance of the students in the arrangement multiplied by the ABA or AA and the 1.1 weight. The attendance must not be converted to contact hours/full-time equivalents as with the other instructional arrangements.

TEC §105.11. Maximum Allowable Indirect Cost.

- (a) No more than 48% of each school district's Foundation School Program (FSP) special allotments under the Texas Education Code, Chapter 42, Subchapter C, may be expended for indirect costs related to the following programs: compensatory education, bilingual education and special language programs, and special education. No more than 45% of each school district's FSP special allotments under the Texas Education Code, Chapter 42, Subchapter C, may be expended for indirect costs related to gifted and talented education programs. No more than 42% of each school district's FSP special allotments under the Texas Education Code, Chapter 42, Subchapter C, may be expended for indirect costs related to career and technical education programs. Indirect costs may be attributed to the following expenditure function codes: 34--Student Transportation; 41--General Administration; 81--Facilities Acquisition and Construction; and the Function 90 series of the general fund, as defined in the Texas Education Agency publication, Financial Accountability System Resource Guide.
- (b) For the 2012-2013 school year and each year thereafter, a school district may choose to use a greater indirect cost allotment under the Texas Education Code, §§42.151, 42.153, 42.154, and 42.156, to the extent the school district receives less funding per weighted student in state and local maintenance and operations revenue than in the 2011-2012 school year. The commissioner of education shall develop a methodology for a school district to make a determination under this section and may require any information necessary to implement this subsection. The commissioner's methodology must limit the percentage increase in allowable indirect cost to no more than the percentage decrease in state and local maintenance and operations revenue from the 2011-2012 school year.

TEC §105.12. Basic Allotment.

A school district may use state aid received pursuant to the Texas Education Code (TEC), Chapter 42, Subchapter B, and indirect costs as defined in §105.11 of this title (relating to Maximum Allowable Indirect Cost) for any lawful purpose, including operations and using, purchasing, or acquiring real property or land; improving real property; constructing or equipping buildings; renovating real property; repairing real property; or maintaining real property. A school district may fund obligations from state aid received pursuant to the TEC, Chapter 42, Subchapter B, including reduction of bond tax by deposit into the district debt service fund, lease purchase agreements, and public property finance contracts authorized under the Local Government Code, §271.004 and §271.005; time warrants issued pursuant to the TEC, §45.103; maintenance notes issued pursuant to the TEC, §45.108; and contracts issued pursuant to the TEC, §44.901.

TAC §89.1125. Allowable Expenditures of State Special Education Funds.

- (a) Persons paid from special education funds shall be assigned to instructional or other duties in the special education program and/or to provide support services to the regular education program in order for students with disabilities to be included in the regular program. Support services shall include, but not be limited to, collaborative planning, co-teaching, small group instruction with special and regular education students, direct instruction to special education students, or other support services determined necessary by the admission, review, and dismissal (ARD) committee for an appropriate program for the student with disabilities. Assignments may include duties supportive to school operations equivalent to those assigned to regular education personnel.
- (b) Personnel assigned to provide support services to the regular education program as stated in subsection (a) of this section may be fully funded from special education funds.
- (c) If personnel are assigned to special education on less than a full-time basis, except as stated in subsection (a) of this section, only that portion of time for which the personnel are assigned to students with disabilities shall be paid from state special education funds.
- (d) State special education funds may be used for special materials, supplies, and equipment which are directly related to the development and implementation of individualized education programs (IEPs) of students and which are not ordinarily purchased for the regular classroom. Office and routine classroom supplies are not allowable. Special equipment may include instructional and assistive technology devices, audiovisual equipment, computers for instruction or assessment purposes, and assessment equipment only if used directly with students.
- (e) State special education funds may be used to contract with consultants to provide staff development, program planning and evaluation, instructional services, assessments, and related services to students with disabilities.
- (f) State special education funds may be used for transportation only to and from residential placements. Prior to using federal funds for transportation costs to and from a residential facility, a district must use state or local funds based on actual expenses up to the state transportation maximum for private transportation contracts.
- (g) State special education funds may be used to pay staff travel to perform services directly related to the education of eligible students with disabilities. Funds may also be used to pay travel of staff (including administrators, general education teachers, and special education teachers and service providers) to attend staff development meetings for the purpose of improving performance in assigned positions directly related to the education of eligible students with disabilities. In no event shall the purpose for attending such staff development meetings include time spent in performing functions relating to the operation of professional organizations. Funds may also be used to pay for the joint training of parents and special education, related services, and general education personnel.

TEC §42.151. Special Education. *(Always keep watch for legislative updates)* for current Accounting Manual updates visit <http://tea.texas.gov/index2.aspx?id=25769817607>

The Texas Education Agency and the Legislative Budget Board is currently assisting the legislature in reviewing Chapter 42 and will make recommendations in the future.

1. For each student in average daily attendance in a special education program under Subchapter A, Chapter 29, in a mainstream instructional arrangement, a school district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 1.1. For each full-time equivalent student in average daily attendance in a special education program under Subchapter A, Chapter 29, in an instructional arrangement other than a mainstream instructional arrangement, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by a weight determined according to instructional arrangement as follows:

- Homebound 5.0
- Hospital class 3.0
- Speech therapy 5.0
- Resource room 3.0
- Self-contained, severe, regular campus Off home campus 3.0
- Self-contained, severe, regular campus campus 3.0
- Off home campus 2.7
- Nonpublic day school 1.7
- Vocational adjustment class 2.3

- (b) A special instructional arrangement for students with disabilities residing in care and treatment facilities, other than state schools, whose parents or guardians do not reside in the district providing education services shall be established under the rules of the State Board of Education. The funding weight for this arrangement shall be 4.0 for those students who receive their education service on a local school district campus. A special instructional arrangement for students with disabilities residing in state schools shall be established under the rules of the State Board of Education with a funding weight of 2.8.
- (c) For funding purposes, the number of contact hours credited per day for each student in the off home campus instructional arrangement may not exceed the contact hours credited per day for the multidistrict class instructional arrangement in the 1992-1993 school year.
- (d) For funding purposes the contact hours credited per day for each student in the resource room; self-contained, mild and moderate; and self-contained, severe, instructional arrangements may not exceed the average of the statewide total contact hours credited per day for those three instructional arrangements in the 1992-1993 school year.
- (e) The State Board of Education by rule shall prescribe the qualifications an instructional arrangement must meet in order to be funded as a particular instructional arrangement under this section. In prescribing the qualifications that a mainstream instructional arrangement must meet, the board shall establish requirements that students with disabilities and their teachers receive the direct, indirect, and support services that are necessary to enrich the regular classroom and enable student success.
- (f) In this section, "full-time equivalent student" means 30 hours of contact a week between a special education student and special education program personnel.
- (g) The State Board of Education shall adopt rules and procedures governing contracts for residential placement of special education students. The legislature shall provide by appropriation for the state's share of the costs of those placements.
- (h) Funds allocated under this section, other than an indirect cost allotment established under State Board of Education rule, must be used in the special education program under Subchapter A, Chapter 29.
- (i) The agency shall encourage the placement of students in special education programs, including students in residential instructional arrangements, in the least restrictive environment appropriate for their educational needs.
- (j) 82nd Legislature summer 2011 repealed 125% Rule.
- (k) A school district that provides an extended year program required by federal law for special education students who may regress is entitled to receive funds in an amount equal to 75 percent, or a lesser percentage determined by the commissioner, of the adjusted basic allotment or adjusted allotment, as applicable, for each full-time equivalent student in average daily attendance, multiplied by the amount designated for the student's instructional arrangement under this section, for each day the program is provided divided by the number of days in the minimum school year. The total amount of state funding for extended year services under this section may not exceed \$10 million per year. A school district may use funds received under this section only in providing an extended year program.
- (l) From the total amount of funds appropriated for special education under this section, the commissioner shall withhold an amount specified in the General Appropriations Act, and distribute that amount to school districts for programs under Section 29.014. The program established under that section is required only in school districts in which the program is financed by funds distributed under this subsection and any other funds available for the program. After deducting the amount withheld under this subsection from the total amount appropriated for special education, the commissioner shall reduce each district's allotment proportionately and shall allocate funds to each district accordingly.

TEC §42.2528. EXCESS FUNDS FOR VIDEO SURVEILLANCE OF SPECIAL EDUCATION SETTINGS.

See Section 7. PROCEDURAL SAFEGUARDS for TEC §42.2528 funding of TEC §29.002 Video surveillance of special education settings.

C. Hospitals

TEC §29.014. School Districts that Provide Education Solely to Students Confined to or Educated in Hospitals.

- (a) This section applies only to a school district that provides education and related services only to students who are confined in or receive educational services in a hospital.
- (b) A school district to which this section applies may operate an extended year program for a period not to exceed 45 days. The district's average daily attendance shall be computed for the regular school year plus the extended year.

- (c) Notwithstanding any other provision of this code, a student whose appropriate education program is a regular education program may receive services and be counted for attendance purposes for the number of hours per week appropriate for the student's condition if the student:
- (1) is temporarily classified as eligible for participation in a special education program because of the student's confinement in a hospital; and
 - (2) the student's education is provided by a district to which this section applies.
- (d) The basic allotment for a student enrolled in a district to which this section applies is adjusted by:
- (1) the cost of education adjustment under Section 42.102 for the school district in which the district is geographically located; and
 - (2) the weight for a homebound student under Section 42.151(a).

D. JJAEP

TEC §37.0061. Funding for Alternative Education Services in Juvenile Residential Facilities

A school district that provides education services to pre-adjudicated and post-adjudicated students who are confined by court order in a juvenile residential facility operated by a juvenile board is entitled to count such students in the district's average daily attendance for purposes of receipt of state funds under the Foundation School Program. If the district has a wealth per student greater than the guaranteed wealth level but less than the equalized wealth level, the district in which the student is enrolled on the date a court orders the student to be confined to a juvenile residential facility shall transfer to the district providing education services an amount equal to the difference between the average Foundation School Program costs per student of the district providing education services and the sum of the state aid and the money from the available school fund received by the district that is attributable to the student for the portion of the school year for which the district provides education services to the student.

E. Nonpublic - Private School

TAC §89.63. Instructional Arrangements and Settings.

- (e) For nonpublic day school placements, the Perryton Special Education SSA will submit information to the TEA indicating the students' identification numbers, initial dates of placement, and the names of the facilities with which the school district or shared service arrangement is contracting. The school district or shared service arrangement shall not count contract students' average daily attendance as eligible. The TEA will determine the number of contract students reported in full-time equivalents and pay state funds to the Perryton Special Education SSA according to the formula prescribed in law.

§300.142 Use of personnel. See also Sect. 5 Instructional Arrangements for Private Schools

- (a) **Use of public school personnel. The Perryton Special Education SSA may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities--**
- (1) **To the extent necessary to provide services under §§300.130 through 300.144 for parentally-placed private school children with disabilities; and**
 - (2) **If those services are not normally provided by the private school.**
- (b) **Use of private school personnel. The Perryton Special Education SSA may use funds available under sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under §§300.130 through 300.144 if--**
- (1) **The employee performs the services outside of his or her regular hours of duty; and**
 - (2) **The employee performs the services under public supervision and control.**

F. Noneducational Funds

TEC §29.013. Noneducational Community-based Support Services for Certain Students with Disabilities.

- (a) The agency shall establish procedures and criteria for the allocation of funds appropriated under this section to school districts for the provision of noneducational community-based support services to certain students with disabilities and their families so that those students may receive an appropriate free public education in the least restrictive environment.
- (b) The funds may be used only for eligible students with disabilities who would remain or would have to be placed in residential facilities primarily for educational reasons without the provision of noneducational

community-based support services.

- (c) The support services may include in-home family support, respite care, and case management for families with a student who otherwise would have been placed by a district in a private residential facility.
- (d) The provision of services under this section does not supersede or limit the responsibility of other agencies to provide or pay for costs of noneducational community-based support services to enable any student with disabilities to receive a free appropriate public education in the least restrictive environment. Specifically, services provided under this section may not be used for a student with disabilities who is currently placed or who needs to be placed in a residential facility primarily for noneducational reasons.

G. Public Insurance

§300.154. Methods of ensuring services.

(d) Children with disabilities who are covered by public benefits or insurance .

- (1) **The Perryton Special Education SSA may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this part, as permitted under the public benefits or insurance program, except as provided in paragraph (d)(2) of this section.**
- (2) **With regard to services required to provide FAPE to an eligible child under this part, the Perryton Special Education SSA--**
 - (i) **May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of the Act;**
 - (ii) **May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parent otherwise would be required to pay;**
 - (iii) **May not use a child's benefits under a public benefits or insurance program if that use would--**
 - (A) **Decrease available lifetime coverage or any other insured benefit;**
 - (B) **Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;**
 - (C) **Increase premiums or lead to the discontinuation of benefits or insurance; or**
 - (D) **Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and**
 - (iv) (A) **Must obtain parental consent consistent with §300.9 each time that access to public benefits or insurance is sought; and**
 (B) **Notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.**

(e) Children with disabilities who are covered by private insurance.

- (1) **With regard to services required to provide FAPE to an eligible child under this part, the Perryton Special Education SSA may access a parent's private insurance proceeds only if the parent provides consent consistent with §300.9.**
- (2) **Each time the Perryton Special Education SSA proposes to access the parent's private insurance proceeds, the Perryton Special Education SSA must--**
 - (i) **Obtain parental consent in accordance with paragraph (e)(1) of this section; and**
 - (ii) **Inform the parents that their refusal to permit the Perryton Special Education SSA to access their private insurance does not relieve the Perryton Special Education SSA of its responsibility to ensure that all required services are provided at no cost to the parents.**

(f) Use of Part B funds.

- (1) **If the Perryton Special Education SSA is unable to obtain parental consent to use the parent's private insurance, or public benefits or insurance when the parent would incur a cost for a specified service required under this part, to ensure FAPE the Perryton Special Education SSA may use its Part B funds to pay for the service.**
- (2) **To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parent would incur a cost, the Perryton Special Education SSA may**

use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parent's benefits or insurance (e.g., the deductible or co-pay amounts).

(g) Proceeds from public benefits or insurance or private insurance.

- (1) Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 CFR 80.25.
- (2) If the Perryton Special Education SSA spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in §§300.163 and 300.203.

(h) Construction. Nothing in this part should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public benefits or insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397aa through 1397jj, or any other public benefits or insurance program.

(Authority: 20 U.S.C. 1412(a)(12) and (e))

Government Code §531.02171. REIMBURSEMENT FOR CERTAIN TELEHEALTH SERVICES.

(a) In this section, "health professional" means an individual who is:

- (1) licensed, registered, certified, or otherwise authorized by this state to practice as a social worker, occupational therapist, or speech-language pathologist;
- (2) a licensed professional counselor;
- (3) a licensed marriage and family therapist; or
- (4) a licensed specialist in school psychology.

(b) The commission shall ensure that Medicaid reimbursement is provided to a school district or open-enrollment charter school for telehealth services provided through the school district or charter school by a health professional, even if the health professional is not the patient's primary care provider, if:

- (1) the school district or charter school is an authorized health care provider under Medicaid; and
- (2) the parent or legal guardian of the patient provides consent before the service is provided.

SECTION 2. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 3. This Act takes effect September 1, 2017.

H. TSD – Texas School for the Deaf

TEC §30.087. Funding.

- (a) The cost of educating students who are deaf or hard of hearing shall be borne by the state and paid from the foundation school fund, but independent school districts and institutions of higher education in the state may and are encouraged to make available property or services in cooperation with the regional day school programs for the deaf for any activities related to the education of students who are deaf or hard of hearing, including research, personnel training, and staff development.
- (b) From the amount appropriated for regional day school programs, the commissioner shall allocate funds to each program based on the number of weighted full-time equivalent students served. The commissioner may consider local resources available in allocating funds under this subsection.
- (c) A school district may receive an allotment for transportation of students participating in a regional day school program, determined in the same manner as an allotment for the transportation of other special education students.

TEC §30.056. Funding of the Texas School for the Deaf.

The funding of the Texas School for the Deaf consists of:

- (1) money the legislature specifically appropriates for the school;
- (2) money the agency allocates to the school under this code;
- (3) money paid under a contract or other agreement;
- (4) money the school receives through a gift or bequest;
- (5) a payment the school receives from a school district under Section 30.003; and
- (6) the school's share of the available school fund and payments to compensate for payments no longer made from the available school fund as provided by Section 30.003(f).

TEC §30.003. Support of Students Enrolled in Texas School for the Blind and Visually Impaired or Texas School for the Deaf.

- (a) For each student enrolled in the Texas School for the Blind and Visually Impaired or the Texas School for the Deaf, the school district that is responsible for providing appropriate special education services to the student shall share the cost of the student's education as provided by this section.
- (b) If the student is admitted to the school for a full-time program for the equivalent of two long semesters, the district's share of the cost is an amount equal to the dollar amount of maintenance and debt service taxes imposed by the district for that year divided by the district's average daily attendance for the preceding year.
- (c) If the student is admitted for a program less than two complete semesters in duration, other than a summer program, the district's share of the cost is an amount equal to the amount that would be the district's share under Subsection (b) for a full-time program multiplied by the quotient resulting from the number of full-time equivalent days in the program divided by the minimum number of days of instruction for students as provided by Section 25.081.
- (d) Each school district and state institution shall provide to the commissioner the necessary information to determine the district's share under this section. The information must be reported to the commissioner on or before a date set by rule of the State Board of Education. After determining the amount of a district's share for all students for which the district is responsible, the commissioner shall deduct that amount from the payments of foundation school funds payable to the district. Each deduction shall be in the same percentage of the total amount of the district's share as the percentage of the total foundation school fund entitlement being paid to the district at the time of the deduction, except that the amount of any deduction may be modified to make necessary adjustments or to correct errors. The commissioner shall provide for remitting the amount deducted to the appropriate school at the same time at which the remaining funds are distributed to the district. If a district does not receive foundation school funds or if a district's foundation school entitlement is less than the amount of the district's share under this section, the commissioner shall direct the district to remit payment to the commissioner, and the commissioner shall remit the district's share to the appropriate school.
- (e) For each student enrolled in the Texas School for the Blind and Visually Impaired or the Texas School for the Deaf, the appropriate school is entitled to the state available school fund apportionment.
- (f) The commissioner, with the assistance of the comptroller, shall determine the amount that the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf would have received from the available school fund if Chapter 28, Acts of the 68th Legislature, 2nd Called Session, 1984, had not transferred statutorily dedicated taxes from the available school fund to the foundation school fund. That amount, minus any amount the schools do receive from the available school fund, shall be set apart as a separate account in the foundation school fund and appropriated to those schools for educational purposes.
- (f-1) The commissioner shall determine the total amount that the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf would have received from school districts in accordance with this section if H.B. No. 1, Acts of the 79th Legislature, 3rd Called Session, 2006, had not reduced the districts' share of the cost of providing education services. That amount, minus any amount the schools do receive from school districts, shall be set aside as a separate account in the foundation school fund and appropriated to those schools for educational purposes.
- (g) The State Board of Education may adopt rules as necessary to implement this section.
- (h) Expired.

I. RDSPD – Regional Day School Programs for the Deaf

TEC §30.085. Use of Local Resources. Local resources shall be used to the fullest practicable extent in the establishment and operation of the regional day school programs for the deaf.

TEC §30.086. Powers and Duties of Agency.

- (a) The agency shall contract with any qualified organization or individual for diagnostic, evaluative, or instructional services or any other services relating to the education of students who are deaf or hard of hearing, including transportation or maintenance services.
- (b) The agency shall employ educational and other personnel, may purchase or lease property, may accept gifts or grants of property or services from any source, including an independent school district or institution of higher education in this state, to establish and operate regional day school programs for the deaf.

TEC §30.087. Funding.

- (a) The cost of educating students who are deaf or hard of hearing shall be borne by the state and paid from the foundation school fund, but independent school districts and institutions of higher education in the state may and are encouraged to make available property or services in cooperation with the regional day school programs for the deaf for any activities related to the education of students who are deaf or hard of hearing, including research, personnel training, and staff development.
- (b) From the amount appropriated for regional day school programs, the commissioner shall allocate funds to each program based on the number of weighted full-time equivalent students served. The commissioner may consider local resources available in allocating funds under this subsection.
- (c) A school district may receive an allotment for transportation of students participating in a regional day school program, determined in the same manner as an allotment for the transportation of other special education students.

J. TSBVI – Texas School for the Blind and Visually Impaired**§300.210 Purchase of instructional materials.**

- (a) **General.** Not later than December 3, 2006, an LEA that chooses to coordinate with the National Instructional Materials Access Center, when purchasing print instructional materials, must acquire those instructional materials in the same manner, and subject to the same conditions as an SEA under §300.172.
- (b) **Rights of LEA.**
 - (1) Nothing in this section shall be construed to require an LEA to coordinate with the National Instructional Materials Access Center (NIMAC).
 - (2) If an LEA chooses not to coordinate with the National Instructional Materials Access Center, the LEA must provide an assurance to the SEA that the LEA will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.
 - (3) Nothing in this section relieves an LEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities in 300.172(e)(1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

TEC §30.002. Education for Children with Visual Impairments.

- (g) To facilitate implementation of this section, the commissioner shall develop a system to distribute from the foundation school fund to school districts or regional education service centers a special supplemental allowance for each student with a visual impairment and for each student with a serious visual disability and another medically diagnosed disability of a significantly limiting nature who is receiving special education services through any approved program. The supplemental allowance may be spent only for special services uniquely required by the nature of the student's disabilities and may not be used in lieu of educational funds otherwise available under this code or through state or local appropriations.

TEC §30.003. Support of Students Enrolled in Texas School for the Blind and Visually Impaired or Texas School for the Deaf. *(found in section H. above)*TAC §89.62. Support of Students Enrolled in the Texas School for the Blind and Visually Impaired and Texas School for the Deaf.

- (a) For each student enrolled in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf, the school district responsible for providing appropriate special education and related services to the student shall share the cost of the student's education (excluding the summer programs) as provided under the Texas Education Code, §30.003.
 - (1) The information required in accordance with the Texas Education Code, §30.003(d), must be submitted in a form prescribed by the commissioner of education within 30 calendar days after the student enrolls in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf.
 - (2) School districts required to remit their shares to the Texas Education Agency in accordance with the Texas Education Code, §30.003(d), shall do so within 60 days of notification by the commissioner of education.
- (b) School districts shall provide, annually, in writing to each parent or legal guardian of an eligible student with visual or auditory impairments, the information specified in the Texas Education Code, §30.004(a)(1-3),

before considering the student's placement for special education services.

TEC §30.025. Funding of Texas School for the Blind and Visually Impaired

The funding of the Texas School for the Blind and Visually Impaired consists of:

- (1) money the legislature specifically appropriates to the school;
- (2) money the agency allocates to the school under this code;
- (3) money paid under a contract or other agreement;
- (4) money the school receives through a gift or bequest;
- (5) a payment the school receives from a school district under Section 30.003; and
- (6) the school's share of the available school fund and payments to compensate for payments no longer made from the available school fund as provided by Section 30.003(f).

§300.172 Access to instructional materials.

(a) General. The State must—

- (1) **Adopt the National Instructional Materials Accessibility Standard (NIMAS), published as Appendix C to Part 300, for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after publication of the NIMAS in the Federal Register on July 19, 2006 (71 FR 41084); and**
- (2) **Establish a State definition of “timely manner” for purposes of paragraphs (b)(2) and (b)(3) of this section if the State is not coordinating with the National Instructional Materials Access Center (NIMAC) or (b)(3) and (c)(2) of this section if the State is coordinating with the NIMAC.**

(b) Rights and responsibilities of SEA.

- (1) **Nothing in this section shall be construed to require any SEA to coordinate with the National Instructional Materials Access Center (NIMAC).**
- (2) **If an SEA chooses not to coordinate with the NIMAC, the agency must provide an assurance to the Secretary that the agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.**
- (3) **Nothing in this section relieves an SEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats, but are not included under the definition of blind or other persons with print disabilities in 300.172(e)(1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.**
- (4) **In order to meet its responsibility under paragraphs (b)(2), (b)(3), and (c) of this section to ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner, the SEA must ensure that all public agencies take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials.**

(c) Preparation and delivery of files. If an SEA chooses to coordinate with the NIMAC, as of December 3, 2006, the SEA must,

- (1) **As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, must enter into a written contract with the publisher of the print instructional materials to--**
 - (i) **Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or**
 - (ii) **Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.**
- (2) **Provide instructional materials to blind persons or other persons with print disabilities in a timely manner.**

(d) Assistive technology. In carrying out this section, the SEA, to the maximum extent possible, must work collaboratively with the State agency responsible for assistive technology programs.

(e) Definitions.

(1) In this section and §300.210--

- (i) **Blind persons or other persons with print disabilities means children served under this part who may qualify to receive books and other publications produced in specialized formats in accordance with the Act entitled "An Act to provide books for adult blind," approved March 3, 1931, 2 U.S.C 135a;**

- (ii) **National Instructional Materials Access Center or NIMAC** means the center established pursuant to section 674(e) of the Act;
 - (iii) **National Instructional Materials Accessibility Standard or NIMAS** has the meaning given the term in section 674(e)(3)(B) of the Act; and
 - (iv) **Specialized formats** has the meaning given the term in section 674(e)(3)(D) of the Act.
- (2) The definitions in paragraph (e)(1) of this section apply to each State and LEA, whether or not the State or LEA chooses to coordinate with the NIMAC. (Authority: 20 U.S.C. 1412(a)(23), 1474(e))

K. Residential *(see Section 5 Instructional Arrangements for all references to Residential)*

XI. STATE PERFORMANCE PLAN and ANNUAL PERFORMANCE REPORT

Information about the State Performance Plan (SPP) / Annual Performance Report (APR) and requirements related to the SPP/APR can be found on the TEA website at:

<http://www.tea.state.tx.us/index2.aspx?id=2147497591>

About the SPP / APR

The Individuals with Disabilities Education Act of 2004 (IDEA 2004), requires each state to develop a six-year performance plan. This State Performance Plan (SPP) evaluates the State's efforts to implement the requirements and purposes of IDEA and illustrates how the State will continuously improve upon this implementation.

Fact Sheet on State Performance Plan

In alignment with IDEA 2004, the US Department of Education Office of Special Education Programs (OSEP) has identified five monitoring priorities within the SPP: (1) Free Appropriate Public Education in the Least Restrictive Environment; (2) Disproportionality; (3) Child Find; (4) Effective Transition; and (5) General Supervision. The PBMAS system uses these areas in the SPP to collect data and monitor school performance.

Monitoring Priority: Free Appropriate Public Education in the Least Restrictive Environment

- Graduation (Indicator 1)
- Dropout (Indicator 2)
- Participation and Performance on Statewide Assessment (Indicator 3A-C)
- Suspension/Expulsion (Indicator 4A-C)
- Educational Environment, Ages 6-21 (Indicator 5A-C)
- Educational Environment, Ages 3-5 (Indicator 6A-B)
- Early Childhood Outcomes (Indicator 7A-C)
- Parent Participation (Indicator 8)

Monitoring Priority: Disproportionality

- Disproportionality in the special education program (Indicator 9)
- Disproportionality by specific disability (Indicator 10)

Monitoring Priority: Effective General Supervision Part B/Child Find

- Child Find (Indicator 11)

Monitoring Priority: Effective General Supervision Part B/Effective Transition

- Early Childhood Transition (Indicator 12)
- Secondary Transition (Indicator 13)
- Post-School Outcomes (Indicator 14A-C)

Monitoring Priority: Effective General Supervision Part B/General Supervision

- Resolution Sessions (Indicator 15)
- Mediation (Indicator 16)
- State Systemic Improvement Plan (SSIP) (Indicator 17)

The Texas Education Agency (TEA) and the Federal Office of Special Education Programs (OSEP) have requirements to monitor, provide technical assistance and enforcement, see Section XIV on the following pages. Continuous Improvement Plans in the Perryton Special Education SSA will use data analysis and focus on the indicators from the SPP / PBMAS, etc. when data show "needs improvement".

Indicator 13 Secondary Transition Percent of youth aged 16 and above with an IEP that includes coordinated, measurable, annual IEP goals and transition services that will reasonably enable the student to meet the post-secondary goals. *Annually the special education teacher at the HS level will review their transition plans to*

insure compliance with SPP #13. Errors or missing data will need to be addressed by scheduling and ARD. Use the form which in in your TRANSITION NOTEBOOK.

In preparation for Indicator 14, the Perryton Special Education SSA will gather data from exiting special education seniors during their twelfth grade year. Data gathered will include but not be limited to: DADS and DARS Intake, Testing, IPE date(Individual Plan for Employability), Refused services date, Comments, Counselor Name/phone number. USE the form which is in your TRANSITION NOTEBOOK

Indicator 14 Post-School Outcomes Percent of youth who had IEPs, are no longer in secondary school and who have been competitively employed, enrolled in some type of postsecondary school, or both, within one year of leaving high school. *The Perryton Special Education SSA will assist TEA by completing a One Year Follow-up by phone to the last known number for those students selected by TEA. Documentation will include tracking the following information:*

Student is: Working pt time paid (up to 29 hours), working full time paid (30 hours +), attending vocational/technical school, 2 year community college, 4 year college, in the military, enroll ed in GED, receiving employment related training, supported employment, connected with DARS, connected with DADS, refused to provide information, unable to locate, other.

XII. EMPLOY AND ADVANCE QUALIFIED INDIVIDUALS WITH DISABILITIES

§300.177 States' sovereign immunity and positive efforts to employ and advance qualified individuals with disabilities.

(a) States' sovereign immunity.

- (1) A State that accepts funds under this part waives its immunity under the 11th amendment of the Constitution of the United States from suit in Federal court for a violation of this part.**
- (2) In a suit against a State for a violation of this part, remedies (including remedies both at law and in equity) are available for such a violation in the suit against any public entity other than a State.**
- (3) Paragraphs (a)(1) and (a)(2) of this section apply with respect to violations that occur in whole or part after the date of enactment of the Education of the Handicapped Act Amendments of 1990.**

(b) Positive efforts to employ and advance qualified individuals with disabilities. Each recipient of assistance under Part B of the Act must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the Act.

The Special Education Department (including High School VAC's) in Perryton Special Education SSA will work in cooperation with the Personnel Office and Administration to carefully review job openings within the district. Consideration will be given to any qualified individual with disabilities to advance in employment. Examples of positive efforts may include providing employment vacancy information to organizations for persons with disabilities and conducting job fairs for persons with disabilities.

TEC §531.02447. Employment-First Policy (SB 1226)

- (a) It is the policy of the state that earning a living wage through competitive employment in the general workforce is the priority and preferred outcome for working-age individuals with disabilities who receive public benefits.**
- (b) The commission, the Texas Education Agency, and the Texas Workforce Commission shall jointly adopt and implement an employment-first policy in accordance with the state's policy under Subsection (a). The policy must:**
 - (1) affirm that an individual with a disability is able to meet the same employment standards as an individual who does not have a disability;**
 - (2) ensure that all working-age individuals with disabilities, including young adults, are offered factual information regarding employment as an individual with a disability, including the relationship between an individual's earned income and the individual's public benefits;**
 - (3) ensure that individuals with disabilities are given the opportunity to understand and explore options for education or training, including postsecondary, graduate, and postgraduate education, vocational or technical training, or other training, as pathways to employment;**
 - (4) promote the availability and accessibility of individualized training designed to prepare an individual with a disability for the individual's preferred employment;**
 - (5) promote partnerships with employers to overcome barriers to meeting workforce needs with the creative use of technology and innovation;**
 - (6) ensure that the staff of public schools, vocational service programs, and community providers are trained and supported to assist in achieving the goal of competitive employment for all individuals with disabilities; and**
 - (7) ensure that competitive employment, while being the priority and preferred outcome, is not required of an individual with a disability to secure or maintain public benefits for which the individual is otherwise eligible.**

TEC §531.02448. Employment-First Task Force.

- (a) The executive commissioner shall establish an interagency employment-first task force, or may use an existing committee or task force, to promote competitive employment of individuals with disabilities and the expectation that individuals with disabilities are able to meet the same employment standards, responsibilities, and expectations as any other working-age adult.**

(b)....

XIII. DEPARTMENTAL BUDGET PROCESS

A. Roles and Responsibilities

1. *Written budget management job responsibilities for the special education budget clerk, secretaries, coordinators and supervisors are on file and provided annually.*
2. *Budget details are reviewed on a regularly scheduled monthly basis. The director maintains oversight and final authority role in all budget decisions. Budget management is not delegated to the budget clerk.*
3. *Timelines are coordinated with the district budget office to ensure that reports reviewed by the special education department contain the most current expenditures (i.e., schedule around monthly postings/disbursements).*
4. *Work is done directly with the district budget office to correct coding errors. Funding allotments for unfilled positions (i.e., 1/12th per month) are reduced or moved. Review independent consultant contracts to ensure full implementation. If full implementation is not occurring, transfer funds to another line item.*

Decentralized :

- *Our district is large enough that decentralized budget management is practiced (meaning the delegation of program specific budget management and decision-making authority to special education coordinators or supervisors). The Job Description for coordinators/ supervisors include budget responsibilities as needed.*
- *Components that need to be decentralized consist of program specific independent contract management, materials, and staff development and travel.*
- *Time is scheduled at least once monthly during established department leadership team meetings to discuss all components of the decentralized budget.*

B. Budget Notebooks

*A separate budget notebook is maintained for each fiscal year. NOTE: For a Shared Service Arrangement include divisions for each member district. Department budget notebooks will be maintained for at least **five** years for reference in determining trends over time, salary increases, the funding balance between federal and local funds and high impact issues.*

C. System Components

1. *Review data:*
 - i. *Travel: District and out of district expenses (total, total by staff member, etc.)*
 - ii. *Staff Development: Training requests by type, person requesting, number of days, cost; local training based on short/long range plan.*
 - iii. *Independent Consultants: Type, number of days, total cost per year.*
 - iv. *Instructional Materials: Type of request, verification of Scientifically based Research (SBR)*
 - v. *Private Schools: IDEA 2004 requires that the Perryton Special Education SSA maintain records and provide information to the state education agency (SEA).*
 - a. *Number determined to be children with disabilities*
 - b. *Number of children served*
 - c. *Type of consultation between LEA and private school*
 - d. *Proportionate share amount, expenditures and roll forward amount*
 - e. *List of representatives of private schools (maintain on file at the LEA level)*
 - vi. *High Cost Funds (HCF) formerly know as Rider 55: Establish a list of students whose direct special education and related services costs will exceed \$25,000 per school year. The ARD Schedule of Services page is used as a reference (i.e., salary for personnel hired to directly work with the student; related services costs; etc.).*
 - a. *Deaf education interpreter: Consulting fees, round trip mileage to Nonpublic Day School.*
 - b. *Bus monitor hired specifically to supervise student (hours per day)*
 - c. *Nonpublic Day School Tuition (monthly costs including summer programs)*
 - d. *Assistive Technology costs for equipment purchased for this student.*

Enter costs throughout the school year so that the district can apply for and receive benefit from funds to support the excess costs of providing special education and related services to high need students.

- ___2. Time and Effort Reports: Personnel funded 100% with IDEA-B Formula or IDEA-B Preschool Funds will submit verification form twice annually. Split-funded personnel must file monthly time and effort reports.*
- ___3. Materials Requisition and Capital Outlay: Departmental materials requisition forms are used and submission timelines shared with staff are followed. Capital outlay purchases are planned using short and long range planning as appropriate.*
- ___4. Noneducational Community-Based Support Services*
- ___5. Nonpublic Day School Programs – maintain and review if required*
- ___6. Residential Applications – complete if required*
- ___7. Other Unique Situations*
 - ___i. Site Based-Decision Making: Principals make special education teaching position decisions at the campus level with or without input from the director.*
 - ___ii. Special Education Teaching/Coaching Positions.*

D. Budget Adjustments and Amendments

- ___1. Effective budget management requires on-going budget adjustments to make the budget work for identified departmental needs and goals. An established monthly review process will enable directors to move money from unfilled salary positions, travel, etc. to areas of need and will lead to efficiency in spending the budget/reducing excessive roll forward amounts. Transfers between direct cost categories (class/objects) may be made without amending the budget as long as the cumulative amount of the transfers does not exceed 25% of the total approved budget.*
- ___2. Budget amendments must be submitted when:*
 - ___a. the additional unbudgeted funds are received (i.e., High Cost Funds (Rider 55), roll forward, funding to maximum entitlement) and/or*
 - ___b. cumulative transfers between major expenditure objects (e.g., class/object codes 6100, 6200, 6300, etc.) exceed the 25% allowable amount.*
- ___3. Completed the following prior to February of each school year and before submission of the funding to full entitlement amendment:*
 - ___a. Residential Set Aside: Decrease this amount by 50% if the district does not have any students in a residential placement.*
 - ___b. Vacant or Unfilled Positions: Reduce funding for all open positions by at least 50% and address the budget changes on the eGrant Amendment #2.*
 - ___c. Capital Outlay: Increase or decrease based on plan implementation, make changes on the eGrant Amendment #2.*
- ___4. Roll forward and lapsed funds: Careful planning and monthly review will avoid need to quickly spend large amounts of funds at the end of a program simply to lower the account balances.*

E. Maintenance of Effort

Local education agencies (LEA) must comply with IDEA 2004 Maintenance of Effort requirements found at 34 CFR §300.162-163 and §§300.203-205. This means that an LEA must ensure that IDEA Part B funds are not used to reduce the level of expenditure from state or local funds made by the LEA for the preceding fiscal year.

Monthly review of expenditure reports from federal and state/local budgets will help identify and correct costly coding errors that could lead to MOE problems. Review the Actual Expenditure by Program and Object within Function General Fund 199 records prior to the submission of the LEA Final Expenditure Report to TEA in July. Follow the format developed by Education Service Center VIII in collaboration with TEA to run specified reports and enter data on a spreadsheet that may be downloaded from the ESC VIII website. <http://www.reg8.net/default.aspx?name=sped.links> Identified problems can be corrected prior to submission of the final report by moving expenditures from federal budgets to state and local budgets. While this is not possible in some cases, the information is still critical in helping the LEA prevent the same mistake from occurring in the next fiscal year. The website also provides information for exceptions to the MOE requirement.

F. Budget Close-out

A budget calendar will include Perryton Special Education SSA and/or special education department final timelines for purchase requisitions, vendor invoices, staff development registration fees and final end of year travel reimbursements. Review the calendar at the beginning of the year as part of the normal back to school staff development process.

Annually review TEA timelines for budget close out changes. The federal fiscal year ends on June 30, local education agencies have 30 days after the end of the IDEA-B Formula, IDEA-B Preschool funds to liquidate all encumbrances (money obligated for a specific expenditure, such as technology or consulting). The final expenditure report is due to TEA 45 days after the end of the federal fiscal year (i.e., June 30). This means that existing department obligations (encumbrances) may be received by the Perryton Special Education SSA during the 30 day period but no new obligations may be made during the 30 day period. New obligations need to wait approval of the new eGrant application. To avoid a lapse between funding cycles, submit the eGrant application early in June to allow time for approval by TEA and board approval, if required by local district policy.

The district budget office will complete or work with the special education department to prepare the final expenditure report. Budget management involving monthly review of expenditure reports should make this a seamless and effortless process.

XIV. MONITORING, TECHNICAL ASSISTANCE AND ENFORCEMENT

The Perryton Special Education SSA will work diligently toward the state performance goals / indicators. We are aware that the achievement and success of students in our schools directly impact the Texas SPP.

§300.600 State monitoring and enforcement.

- (a) The TEA must--
- (1) Monitor the implementation of this part;
 - (2) Make determinations annually about the performance of the Perryton Special Education SSA using the categories in §300.603(b)(1);
 - (3) Enforce this part, consistent with §300.604, using appropriate enforcement mechanisms, which must include, if applicable, the enforcement mechanisms identified in §300.604(a)(1) (technical assistance), (a)(3) (conditions on funding of an LEA), (b)(2)(i) (a corrective action plan or improvement plan), (b)(2)(v) (withholding funds, in whole or in part, by the SEA), and (c)(2) (withholding funds, in whole or in part, by the SEA); and
 - (4) Report annually on the performance of the State and Perryton Special Education SSA under this part, as provided in §300.602(b)(1)(i)(A) and (b)(2).
- (b) The primary focus of the State's monitoring activities must be on—
- (1) Improving educational results and functional outcomes for all children with disabilities; and
 - (2) Ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.
- (c) As a part of its responsibilities under paragraph (a) of this section, the TEA must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in paragraph (d) of this section, and the indicators established by the Secretary for the TEA performance plans.
- (d) The TEA must monitor the LEAs located in the State, using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:
- (1) Provision of FAPE in the least restrictive environment.
 - (2) State exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services as defined in §300.43 and in 20 U.S.C. 1437(a)(9).
 - (3) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.
- (e) In exercising its monitoring responsibilities under paragraph (d) of this section, the TEA must ensure that when it identifies noncompliance with the requirements of this part by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the TEA's identification of the noncompliance.

§300.601 Texas Education Agency (TEA) performance plans and data collection.

- (a) General. Not later than December 3, 2005, each State must have in place a performance plan that evaluates the State's efforts to implement the requirements and purposes of Part B of the Act, and describes how the State will improve such implementation.
- (1) TEA must submit the State's performance plan to the Secretary for approval in accordance with the approval process described in section 616(c) of the Act.
 - (2) TEA must review its State performance plan at least once every six years, and submit any amendments to the Secretary.
 - (3) As part of the State performance plan, each State must establish measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in §300.600(d).
- (b) Data collection.

- (1) TEA must collect valid and reliable information as needed to report annually to the Secretary on the indicators established by the Secretary for the State performance plans.
- (2) If the Secretary permits States to collect data on specific indicators through State monitoring or sampling, and the State collects the data through State monitoring or sampling, the State must collect data on those indicators for each LEA at least once during the period of the State performance plan.
- (3) Nothing in Part B of the Act shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part B of the Act.

§300.602 TEA use of targets and reporting.

- (a) General. TEA must use the targets established in the State's performance plan under §300.601 and the priority areas described in §300.600(d) to analyze the performance of the Perryton Special Education SSA.
- (b) Public reporting and privacy —
 - (1) Public report.
 - (i) Subject to paragraph (b)(1)(ii) of this section, the TEA must--
 - (A) Report annually to the public on the performance of each LEA located in Texas on the targets in the State's performance plan as soon as practicable but no later than 120 days following the State's submission of its annual performance report to the Secretary under paragraph (b)(2) of this section; and
 - (B) Make each of the following items available through public means: the State's performance plan, under Sec. 300.601(a); annual performance reports, under paragraph (b)(2) of this section; and the State's annual reports on the performance of each LEA located in the State, under paragraph (b)(1)(i)(A) of this section. In doing so, the State must, at a minimum, post the plan and reports on the TEA's Web site, and distribute the plan and reports to the media and through public agencies.
 - (ii) If the TEA, in meeting the requirements of paragraph (b)(1)(i) of this section, collects performance data through State monitoring or sampling, the TEA must include in its report under paragraph (b)(1)(i)(A) of this section the most recently available performance data on each LEA, and the date the data were obtained.
 - (2) State performance report. The TEA must report annually to the Secretary on the performance of the State under the TEA's performance plan.
 - (3) Privacy. TEA must not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children, or where the available data are insufficient to yield statistically reliable information.

§300.603 Secretary's review and determination regarding State performance.

- (a) Review. The Secretary annually reviews the State's performance report submitted pursuant to §300.602(b)(2).
- (b) Determination —
 - (1) General. Based on the information provided by the TEA in the State's annual performance report, information obtained through monitoring visits, and any other public information made available, the Secretary determines if the State—
 - (i) Meets the requirements and purposes of Part B of the Act;
 - (ii) Needs assistance in implementing the requirements of Part B of the Act;
 - (iii) Needs intervention in implementing the requirements of Part B of the Act; or
 - (iv) Needs substantial intervention in implementing the requirements of Part B of the Act.
 - (2) Notice and opportunity for a hearing.
 - (i) For determinations made under paragraphs (b)(1)(iii) and (b)(1)(iv) of this section, the Secretary provides reasonable notice and an opportunity for a hearing on those determinations.
 - (ii) The hearing described in paragraph (b)(2) of this section consists of an opportunity to meet with the Assistant Secretary for Special Education and Rehabilitative Services to demonstrate why the Department should not make the determination described in paragraph (b)(1) of this section.

§300.604 Enforcement.

- (a) **Needs assistance.** If the Secretary determines, for two consecutive years, that the Texas Education Agency (TEA) needs assistance under §300.603(b)(1)(ii) in implementing the requirements of Part B of the Act, the Secretary takes one or more of the following actions:
- (1) Advises the TEA of available sources of technical assistance that may help the TEA address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and requires the State to work with appropriate entities. Such technical assistance may include—
 - (i) The provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the area for concern within a specified period of time;
 - (ii) Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;
 - (iii) Designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and
 - (iv) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under Part D of the Act, and private providers of scientifically based technical assistance.
 - (2) Directs the use of State-level funds under section 611(e) of the Act on the area or areas in which the State needs assistance.
 - (3) Identifies the State as a high-risk grantee and imposes special conditions on the State's grant under Part B of the Act.
- (b) **Needs intervention.** If the Secretary determines, for three or more consecutive years, that a State needs intervention under §300.603(b)(1)(iii) in implementing the requirements of Part B of the Act, the following shall apply:
- (1) The Secretary may take any of the actions described in paragraph (a) of this section.
 - (2) The Secretary takes one or more of the following actions:
 - (i) Requires the TEA to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within one year.
 - (ii) Requires the TEA to enter into a compliance agreement under section 457 of the General Education Provisions Act, as amended, 20 U.S.C. 1221 et seq. (GEPA), if the Secretary has reason to believe that the State cannot correct the problem within one year.
 - (iii) For each year of the determination, withholds not less than 20 percent and not more than 50 percent of the State's funds under section 611(e) of the Act, until the Secretary determines the State has sufficiently addressed the areas in which the State needs intervention.
 - (iv) Seeks to recover funds under section 452 of GEPA.
 - (v) Withholds, in whole or in part, any further payments to the State under Part B of the Act.
 - (vi) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.
- (c) **Needs substantial intervention.** Notwithstanding paragraph (a) or (b) of this section, at any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of Part B of the Act or that there is a substantial failure to comply with any condition of an SEA's or LEA's eligibility under Part B of the Act, the Secretary takes one or more of the following actions:
- (1) Recovers funds under section 452 of GEPA.
 - (2) Withholds, in whole or in part, any further payments to the State under Part B of the Act.
 - (3) Refers the case to the Office of the Inspector General at the Department of Education.
 - (4) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.
- (d) **Report to Congress.** The Secretary reports to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 30 days of taking enforcement action pursuant to paragraph (a), (b), or (c) of this section, on the specific action taken and the reasons why enforcement action was taken.

§300.605 Withholding funds.

- (a) **Opportunity for hearing.** Prior to withholding any funds under Part B of the Act, the Secretary provides reasonable notice and an opportunity for a hearing to the SEA involved, pursuant to the procedures in §§300.180 through 300.183.
- (b) **Suspension.** Pending the outcome of any hearing to withhold payments under paragraph (a) of this section, the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under Part B of the Act, or both, after the recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under Part B of the Act should not be suspended.
- (c) **Nature of withholding.**
 - (1) If the Secretary determines that it is appropriate to withhold further payments under §300.604(b)(2) or (c)(2), the Secretary may determine—
 - (i) That the withholding will be limited to programs or projects, or portions of programs or projects, that affected the Secretary's determination under §300.603(b)(1); or
 - (ii) That the TEA must not make further payments under Part B of the Act to specified State agencies or LEAs that caused or were involved in the Secretary's determination under §300.603(b)(1).
 - (2) Until the Secretary is satisfied that the condition that caused the initial withholding has been substantially rectified—
 - (i) Payments to the State under Part B of the Act must be withheld in whole or in part; and
 - (ii) Payments by the SEA under Part B of the Act must be limited to State agencies and LEAs whose actions did not cause or were not involved in the Secretary's determination under §300.603(b)(1), as the case may be.

§300.606 Public attention.

Whenever TEA receives notice that the Secretary is proposing to take or is taking an enforcement action pursuant to Sec. 300.604, the TEA must, by means of a public notice, take such actions as may be necessary to notify the public within Texas of the pendency of an action pursuant to Sec. 300.604, including, at a minimum, by posting the notice on the TEA's Web site and distributing the notice to the media and through public agencies. (Authority: 20 U.S.C. 1416(e)(7))

§300.607 Divided State agency responsibility.

For purposes of this subpart, if responsibility for ensuring that the requirements of Part B of the Act are met with respect to children with disabilities who are convicted as adults under Texas law and incarcerated in adult prisons is assigned to a public agency other than the TEA pursuant to §300.149(d), and if the Secretary finds that the failure to comply substantially with the provisions of Part B of the Act are related to a failure by the public agency, the Secretary takes appropriate corrective action to ensure compliance with Part B of the Act, except that—

- (a) Any reduction or withholding of payments to the State under §300.604 must be proportionate to the total funds allotted under section 611 of the Act to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the TEA; and
- (b) Any withholding of funds under §300.604 must be limited to the specific agency responsible for the failure to comply with Part B of the Act.

§300.608 State enforcement.

- (a) If TEA determines that Perryton Special Education SSA is not meeting the requirements of Part B of the Act, including the targets in the State's performance plan, the TEA must prohibit the Perryton Special Education SSA from reducing the Perryton Special Education SSA's maintenance of effort under §300.203 for any fiscal year.
- (b) Nothing in this subpart shall be construed to restrict TEA from utilizing any other authority available to it to monitor and enforce the requirements of Part B of the Act.

TAC §89.1076. Interventions and Sanctions.

The Texas Education Agency (TEA) must 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, the TEA may combine any intervention and sanction. The system of interventions and sanctions will include, but not be limited to, the following: (*§39.131 changed to §39.102 June 2009*)

- (1) on-site review for failure to meet program or compliance requirements;
- (2) required fiscal audit of specific programs and/or of the district, paid for by the district;
- (3) required submission of corrective actions, 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;
- (11) lowering of the special education monitoring/compliance status and/or the accreditation rating of the district; and/or
- (12) other authorized interventions and sanctions as determined by the commissioner.

§300.120 Monitoring activities.

- (a) The TEA must carry out activities to ensure that §300.114 (*LRE activities*) is implemented by each public agency.**
- (b) If there is evidence that a public agency makes placements that are inconsistent with §300.114, the TEA must—**
- (1) Review the public agencies justification for its actions; and**
 - (2) Assist in planning and implementing any necessary corrective action. Authority: 20 U.S.C. 1412(a)(5))**

TEC §29.005

Section 1. is amended by adding Subsection (f) to read as follows:

- (f) The written statement of a student's individualized education program may be required to include only information included in the model form developed under Section 29.0051(a).

Section 2. Subchapter A, Chapter 29, Education Code, is amended by adding Section 29.0051 to read as follows:

§29.0051. MODEL FORM.

- (a) The agency shall develop a model form for use in developing an individualized education program under Section 29.005(b). The form must be clear, concise, well organized, and understandable to parents and educators and may include only:
- (1) the information included in the model form developed under 20 U.S.C. Section 1417(e)(1);
 - (2) a state-imposed requirement relevant to an individualized education program not required under federal law; and
 - (3) the requirements identified under 20 U.S.C. Section 1407(a)(2).
- (b) The agency shall post on the agency's Internet website the form developed under Subsection (a).
- (c) A school district may use the form developed under Subsection (a) to comply with the requirements for an individualized education program under 20 U.S.C. Section 1414(d).

XV. SHARED SERVICE ARRANGEMENTS

Shared Service Arrangements

TEC §29.007. Shared Services Arrangements. School districts may enter into a written contract to jointly operate their special education programs. The contract must be approved by the commissioner. Funds to which the cooperating districts are entitled may be allocated to the districts jointly as shared services arrangement units or shared services arrangement funds in accordance with the shared services arrangement districts' agreement.

TAC §89.1075. General Program Requirements and Local District Procedures.

(f) School districts that jointly operate their special education programs as a shared services arrangement, in accordance with TEC, §29.007, must do so in accordance with procedures developed by the Texas Education Agency (TEA).

XVI. CHARTER SCHOOLS

§300.7 Charter school.

Charter school has the meaning given the term in section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 et. seq. (ESEA). (Authority: 20 U.S.C. 7221i(1))

§300.209 Treatment of charter schools and their students.

- (a) **Rights of children with disabilities.** Children with disabilities who attend public charter schools and their parents retain all rights under this part.
- (b) **Charter schools that are public schools of the LEA.**
- (1) In carrying out Part B of the Act and these regulations with respect to charter schools that are public schools of the LEA, the LEA must—
 - (i) Serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools; and
 - (ii) Provides funds under Part B of the Act to those charter schools--
 - (A) On the same basis as the LEA provides funds to the LEA's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and
 - (B) At the same time as the LEA distributes other Federal funds to the LEA's other public schools, consistent with the State's charter school law.
 - (2) If the public charter school is a school of an LEA that receives funding under §300.705 and includes other public schools--
 - (i) The LEA is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity; and
 - (ii) The LEA must meet the requirements of paragraph (b)(1) of this section.
- (c) **Public charter schools that are LEAs.** If the public charter school is an LEA, consistent with §300.28, that receives funding under §300.705, that charter school is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity.
- (d) **Public charter schools that are not an LEA or a school that is part of an LEA.**
- (1) If the public charter school is not an LEA receiving funding under §300.705, or a school that is part of an LEA receiving funding under §300.705, the SEA is responsible for ensuring that the requirements of this part are met.
 - (2) Paragraph (d)(1) of this section does not preclude a State from assigning initial responsibility for ensuring the requirements of this part are met to another entity. However, the SEA must maintain the ultimate responsibility for ensuring compliance with this part, consistent with §300.149.