

Adopted Amendments

19 TAC Chapter 89
Adaptations for Special Populations
Subchapter AA. Commissioner's Rules
Concerning Special Education Services

Technical Assistance Side-by-Side

This document contains the adopted amendments to 19 TAC Chapter 89. Adaptations for Special Populations, Subchapter AA. Commissioner's Rules Concerning Special Education Services, posted in the *Texas Register* on April 12, 2002. Commentary highlighting recent changes to these commissioner's rules is also included to the right of the rules text. The rules text reflects rules previously in effect, revisions that initially were proposed (single underline), and revisions resulting from the public comment period leading to final adoption (double underline). Updates to this document will be posted to the Special Education Web Page at:

[http://www.tea.state.tx.us/special.ed/
rules/pdf/adoptrule02.pdf](http://www.tea.state.tx.us/special.ed/rules/pdf/adoptrule02.pdf)

The complete commissioner's rules can be found on the Web at <http://www.tea.state.tx.us/rules> under the link *Texas Administrative Code (TAC) – Currently in Effect*.

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

§89.1049. Parental Rights Regarding Adult Students.

[Unless parental rights have been terminated by judicial decree, the parent and student with a disability shall begin to share parental rights under the Individuals with Disabilities Education Act (IDEA) when the student reaches 18 years of age. Beginning at least one year before a student reaches 18 years of age, the student's individualized education program must include a statement that the student has been informed of his or her rights under IDEA, Part B, that will be shared with his or her parents.]

§89.1049. Parental Rights Regarding Adult Students.

- (a) In accordance with 34 Code of Federal Regulations (CFR), §300.347(c) and §300.517, and Texas Education Code (TEC), §29.017, beginning at least one year before a student reaches 18 years of age, the student's individualized education program (IEP) must include a statement that the student has been informed that, unless the student's parent or other individual has been granted guardianship of the student under the Probate Code, Chapter XIII, Guardianship, all rights granted to the parent under the Individuals with Disabilities Education Act (IDEA), Part B, other than the right to receive any notice required under IDEA, Part B, will transfer to the student upon reaching age 18. After the student reaches the age of 18, except as provided by subsection (b) of this section, the school district shall provide any notice required under IDEA, Part B, to both the adult student and the parent.
- (b) In accordance with 34 CFR, §300.517(a)(2), and TEC, §29.017(a), all rights accorded to a parent under IDEA, Part B, including the right to receive any notice required by IDEA, Part B, will transfer to an 18-year-

Rights will transfer to students with disabilities at the age of majority, just as they do to students without disabilities, unless it has been determined by a legal process that this is not appropriate based on the competence of the student to make educational decisions. The adopted rule provides for the appropriate and required transfer of parental rights to an adult student, unless action under the Probate Code has prevented the transfer. A guardianship proceeding under the Probate Code is the only mechanism available in state law for determining that an individual with a disability who has reached the age of majority is not competent to make educational decisions.

An appropriate practice would be to inform the student of the rights which will transfer and include the related statement in the IEP when the student is 16 years of age. These activities must be completed at least one year prior to the student's 18th birthday. The Procedural Safeguards document must be provided on a routine basis to the student as part of informing the student of the rights that will transfer.

Parents will continue to receive notice under IDEA -B after the transfer of rights, unless the student is incarcerated as referenced in subsection (b).

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old student who is incarcerated in an adult or juvenile, state or local correctional institution, unless the student's parent or other individual has been granted guardianship of the student under the Probate Code, Chapter XIII, Guardianship.

(c) In accordance with 34 CFR, §300.517(a)(3), a school district must notify in writing the adult student and parent of the transfer of parental rights, as described in subsections (a) and (b) of this section, at the time the student reaches the age of 18. This notification is separate and distinct from the requirement that the student's IEP include a statement relating to the transfer of parental rights beginning at least one year before the student reaches the age of 18. This notification is not required to contain the elements of notice referenced in 34 CFR, §300.503, but must include a statement that parental rights have transferred to the adult student and provide contact information for the parties to use in obtaining additional information.

(d) A notice under IDEA, Part B, that is required to be given to an adult student and parent does not create a right for the parent to consent to or participate in the proposal or refusal to which the notice relates. For example, a notice of an admission, review, and dismissal (ARD) committee meeting does not constitute invitation to, or create a right for, the parent to attend the meeting. However, in accordance with 34 CFR, §300.344(a)(6), the adult student or the school district may invite individuals who have knowledge or special expertise regarding the student, including the parent.

The general expectation is that notice of transfer will be provided on or before the student's 18th birthday. In all cases, notification must be received by both the adult student and the parent prior to any occasion in which the student is called upon the exercise their newly granted rights.

More than one source for obtaining additional information should be included in the notice.

A transfer of rights gives the student the right to educational decision-making, including the right to make decisions regarding filing for a due process hearing or requesting a 10-day ARD recess.

The agency believes that the right to notice and the right to attend and participate in ARD committee meetings as an ARD committee member are two separate rights under federal and state law.

TEC §29.017 transfers to adult students the rights to ARD committee membership and participation. The agency does not believe that the rule as written precludes continued parent participation in the special education process, even when guardianship is not obtained. Parents can continue to be involved in the process at the request of either the district or the adult student and can continue to support students in educational decision making after a transfer of rights. In fact, the rule explicitly recognizes the right of a district or adult student to invite individuals who have knowledge or special expertise regarding the student, including parents. Additionally, an adult student may choose to have a parent or another individual attend an ARD committee meeting for the purpose of providing support to the student.

The agency supports the provision of training to both parents and students to facilitate the transfer process and appropriate educational decision-making.

If the school invites the parent to an ARD and the adult student refuses to participate in an ARD in which the parent is present, efforts should be made by the local education agency (LEA) to resolve the conflict. However, if the

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(e) Nothing in this section prohibits a valid power of attorney from being executed by an individual who holds rights under IDEA. Part B.

§89.1050. The Admission, Review, and Dismissal (ARD) Committee.

- (a) Each school district shall establish an admission, review, and dismissal (ARD) committee for each eligible student with a disability and for each student for whom a full and individual initial evaluation is conducted pursuant to §89.1011 of this title (relating to Referral for Full and Individual Initial Evaluation). The ARD committee shall be the individualized education program (IEP) team defined in federal law and regulations, including, specifically, 34 Code of Federal Regulations (CFR), §300.344. The school district shall be responsible for all of the functions for which the IEP team is responsible under federal law and regulations and for which the ARD committee is responsible under state law, including, specifically, the following:
- (1) 34 CFR, §§300.340-300.349, and Texas Education Code (TEC), §29.005 (Individualized Education Program);
 - (2) 34 CFR, §§300.400-300.402 (relating to placement of eligible students in private schools by a school district);
 - (3) 34 CFR, §§300.452, 300.455, and 300.456 (relating to the development and implementation of service plans for eligible students in private school who have been designated to receive special education and related services);
 - (4) 34 CFR, §§300.520, 300.522, and 300.523, and TEC, §37.004 (Placement of Students with Disabilities);
 - (5) 34 CFR, §§300.532-300.536 (relating to evaluations, re-evaluations, and determination of eligibility);

conflict continues, the ARD can be held as long as the required members of the ARD/IEP team are present and other procedural requirements are followed.

A surrogate parent would be treated as a parent under this rule as it relates to notice and implementation requirements.

An individual who holds rights under IDEA -B can execute a power of attorney in regard to educational decision making.

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- (6) 34 CFR, §§300.550-300.553 (relating to least restrictive environment);
 - (7) TEC, §28.006 (Reading Diagnosis);
 - (8) TEC, §28.0211 (Satisfactory Performance on Assessment Instruments Required; Accelerated Instruction);
 - (9) TEC, Chapter 29, Subchapter I (Programs for Students Who Are Deaf or Hard of Hearing);
 - (10) TEC, §30.002 (Education of Children with Visual Impairments);
 - (11) TEC, §30.003 (Support of Students Enrolled in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf);
 - (12) TEC, §33.081 (Extracurricular Activities);
 - (13) TEC, Chapter 39, Subchapter B (Assessment of Academic Skills); and
 - (14) TEC, §42.151 (Special Education).
- (b) For a child from birth through two years of age with visual and/or auditory impairments, an individualized family services plan (IFSP) meeting must be held in place of an ARD committee meeting in accordance with 34 CFR, §§303.340-303.346, and the memorandum of understanding between the Texas Education Agency (TEA) and Texas Interagency Council on Early Childhood Intervention. For students three years of age and older, school districts must develop an IEP.
- (c) At least one general education teacher of the student (if the student is, or may be, participating in the general education environment) shall participate as a member of the ARD committee. The special education teacher or special education provider that participates in the ARD committee meeting in accordance with 34 CFR, §300.344(a)(3), must be certified in the child's suspected areas of disability. When a specific certification is not required to serve certain disability categories, then the special education teacher or special education provider must be qualified to provide the educational services that the child may need.

The adopted rule clarifies that LEAs will develop IEPs, as opposed to IFSPs, for students three years of age and older. The requirements of §300.342(c)(2), related to the provision of a detailed explanation to parents of the differences between an IFSP and IEP, do not apply since LEAs must develop IEPs for children 3-5 years of age. However, it is good practice for LEAs to share this information with parents as part of the transition process.

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Districts should refer to §89.1131 of this title (relating to Qualifications of Special Education, Related Service, and Paraprofessional Personnel) to ensure that appropriate teachers and/or service providers are present and participate at each ARD committee meeting.

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

- (e) The written report of the ARD committee shall document the decisions of the committee with respect to issues discussed at the meeting. The report shall include the date, names, positions, and signatures of the members participating in each meeting in accordance with 34 CFR, §§300.344, 300.345, 300.348, and 300.349. The report shall also indicate each member's agreement or disagreement with the committee's decisions. In the event TEC, §29.005(d) (1), applies, the district shall provide a written or audiotaped copy of the student's IEP, as defined in 34 CFR, §300.346 and §300.347. In the event TEC, §29.005(d)(2), applies, the district shall make a good faith effort to provide a written or audiotaped copy of the student's IEP, as defined in 34 CFR, §300.346 and §300.347.

- (f) For a student who is new to a school district:

- (1) when a student transfers within the state, the ARD committee may, but is not required to, meet when the student enrolls and a copy of the student's IEP is available, the parent(s) indicate in writing that they are satisfied with the current IEP, and the district determines that the current IEP is appropriate and can be implemented as written; or

The adopted language clarifies the responsibility of the ARD committee related to the decisions to be made on the first day of classes in the fall when the 30th day falls during the summer. The decisions include the initial eligibility determination since, in Texas, it is the ARD committee that both determines initial eligibility and performs the duties of the IEP team. The timeline for conducting a formal ARD committee meeting does not prevent an interim discussion of findings and information prior to the official meeting.

The language also places in the proper order the determination of eligibility, development of the IEP, and the resulting placement decision.

ESY terminology and acronym is made consistent with other rule language.

The rule clarifies the responsibility of the LEA to provide a written or audiotaped copy of the student's IEP under TEC §29.005(d)(2), when a parent is unable to speak English, and the native language of the parent is a language other than Spanish. Specifically, if a child's parent is unable to speak English, TEC §29.005(d)(1) requires the IEP to be translated into Spanish if Spanish is the parent's native language, and TEC §29.005(d)(2) requires a good faith effort to provide a translated copy of the IEP to the parent if the parent's native language is a language other than Spanish. In regard to this requirement, a copy of the IEP refers to the entire IEP, not just goals and objectives.

The flexibility of (f)(1) is available only for students who transfer within the state of Texas. For in-state transfers, the ARD committee is not required to meet when a student enrolls and a copy of the student's IEP is available if the parents indicate in writing that they are satisfied with the IEP and the LEA determines that the current IEP is appropriate and can be implemented.

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(2) if the conditions of subsection (f)(1) of this section are not met, then the ARD committee must meet when the student enrolls and the parents verify that the student was receiving special education services in the previous school district, or the previous school district verifies in writing or by telephone that the student was receiving special education services. At this meeting, the ARD committee must do one of the following:

(A) the ARD committee may determine that it has appropriate evaluation data and other information to develop and begin implementation of a complete IEP for the student; or

(B) the ARD committee may determine that valid evaluation data and other information from the previous school district are insufficient or unavailable to develop a complete IEP. In this event, the ARD committee may authorize the provision of temporary special education services pending receipt of valid evaluation data from the previous school district or the collection of new evaluation data by the current school district. In this situation, a second ARD committee meeting must be held within 30 school days from the date of the first ARD committee meeting to finalize or develop an IEP based on current information.

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

LEAs need to develop procedures and/or operating guidelines regarding how the LEA will implement (f)(1) and make determinations of appropriateness in relation to the IEP. In order to make these determinations, an entire copy of the IEP must be available (not just goals and benchmarks/objectives).

The requirements of (f)(2) are consistent with previous rules.

At the enrollment ARD, a complete IEP can be developed. If sufficient information is available to allow this to occur, a second ARD is not necessary.

If data and information are insufficient to allow the development of a complete IEP at the enrollment ARD, a second ARD must be held within 30 school days to finalize or develop an IEP based on current information.

The timelines for furnishing records as specified in this rule mirror the requirements established by TEC §25.002.

Student records as referenced in subsection (f)(3) include all records that are needed for the appropriate placement and continued education of the student, including records related to Section 504 or special education services under the IDEA.

FERPA requirements related to transfer of records are clarified.

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~~[(f) For a student who is new to a school district, the ARD committee may meet when the student enrolls and the parents verify that the student was receiving special education services in the previous school district, or the previous school district verifies in writing or by telephone that the student was receiving special education services. Special education services that are provided prior to receipt of valid evaluation data from the previous school district or collection of new evaluation data are temporary and contingent upon either receipt of valid evaluation data from the previous school district or the collection of new evaluation data. In any event, an ARD committee meeting must be held within 30 school days from the date of the first ARD committee meeting in the district to finalize or develop an IEP based on the evaluation data. The student's current and previous school districts are not required to obtain parental consent before requesting or sending the student's special education records if the disclosure is conducted in accordance with 34 CFR, §99.31(a)(2) and §99.34. In accordance with TEC, §25.002, the school district in which the student was previously enrolled shall furnish the new school district with a copy of the student's records, including the child's special education records, not later than the 30th calendar day after the student was enrolled in the new school district.]~~

(g) All disciplinary actions regarding students with disabilities shall be determined in accordance with 34 CFR, §§300.121 and 300.519-300.529 (relating to disciplinary actions and procedures) , ~~and~~ the TEC, Chapter 37, Subchapter A (Alternative Settings for Behavior Management) , and §89.1053 of this title (relating to Procedures for Use of Restraint and Time-Out) ~~and §89.1054 of this title (relating to Seclusion)~~.

(h) All members of the ARD committee shall have the opportunity to participate in a collaborative manner in developing the IEP. A decision of the committee concerning required elements of the IEP shall be made by mutual agreement of the required members if possible. The committee may agree to an annual IEP or an IEP of shorter duration.

(1) When mutual agreement about all required elements of the IEP is not achieved, the party (the parents or adult student) who disagrees shall be offered a single opportunity to have the

A citation to the new rule section, Procedures for Use of Restraint and Time-Out, is added based on the relationship of the section to disciplinary actions regarding students with disabilities.

The reference to §89.1054 is removed based on the withdrawal of the rule section (see §89.1054 for discussion of the withdrawal of the rule).

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committee recess for a period of time not to exceed ten school days. This recess is not required when the student's presence on the campus presents a danger of physical harm to the student or others or when the student has committed an expellable offense or an offense which may lead to a placement in an alternative education program (AEP). The requirements of this subsection (h) do not prohibit the members of the ARD committee from recessing an ARD committee meeting for reasons other than the failure of the parents and the school district from reaching mutual agreement about all required elements of an IEP.

- (2) During the recess the committee members shall consider alternatives, gather additional data, prepare further documentation, and/or obtain additional resource persons which may assist in enabling the ARD committee to reach mutual agreement.
- (3) The date, time, and place for continuing the ARD committee meeting shall be determined by mutual agreement prior to the recess.
- (4) If a ten-day recess is implemented as provided in paragraph (1) of this subsection and the ARD committee still cannot reach mutual agreement, the district shall implement the IEP which it has determined to be appropriate for the student.
- (5) When mutual agreement is not reached, a written statement of the basis for the disagreement shall be included in the IEP. The members who disagree shall be offered the opportunity to write their own statements.
- (6) When a district implements an IEP with which the parents disagree or the adult student disagrees, the district shall provide prior written notice to the parents or adult student as required in 34 CFR, §300.503.
- (7) Parents shall have the right to file a complaint, request mediation, or request a due process hearing at any point when they disagree with decisions of the ARD committee.

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§89.1052. Discretionary Placements in Juvenile Justice Alternative Education Programs (JJAEP).

- (a) This section will expire on September 1, 2003.

- (b) In a county with a JJAEP, a local school district ~~[or charter school]~~ shall invite the administrator of the JJAEP or the administrator's designee to an admission, review, and dismissal (ARD) committee meeting convened to discuss a student's expulsion under the provisions listed in Texas Education Code (TEC), §37.004(e), relating to offenses for which a school district may expel a student. The reasonable notice of the ARD committee meeting must be provided consistent with 34 CFR, §300.345 and §300.503, and §89.1015 of this title (relating to Time Line for All Notices), and a copy of the student's current individualized education program (IEP) must be provided to the JJAEP administrator or designee with the notice. If the JJAEP representative is unable to attend the ARD committee meeting, the representative must be given the opportunity to participate in the meeting through alternative means including conference telephone calls. The JJAEP representative may participate in the meeting to the extent that the meeting relates to the student's placement in the JJAEP and implementation of the student's current IEP in the JJAEP.

- (c) In accordance with TEC, §37.004(f), when the JJAEP administrator or designee provides written notice of specific concerns to the school district ~~[or charter school]~~ from which a student was expelled under one

TEC §37.004, subsections (e) and (f) also expire September 1, 2003. The law currently is in effect and must be implemented as required by LEAs.

The reference to charter schools was removed because the agency can enforce rules, as they apply to charter schools, through TEC Chapter 12 without specific reference to charter schools. This is consistent with other sections of rule.

The requirements for coordination with JJAEP administrators as specified in this rule mirror the requirements established by TEC §37.004.

The expulsions listed in TEC §37.004 generally are termed to be “discretionary” (as opposed to mandatory) in nature.

The reasonable notice to the JJAEP administrator or designee must meet the federal requirements related to parent participation (34 CFR §300.345) and prior notice/content of the notice (34 CFR §300.503), and it must meet the five school day time line as referenced in §89.1015. This basically requires that the JJAEP administrator be notified using the same methodology and on the same time lines as the parent is notified of the ARD committee meeting. Additionally, a copy of the student’s current IEP must be provided with the notice.

Participation of the JJAEP administrator or designee is limited to issues related to the student’s placement in the JJAEP and implementation of the student’s current IEP in the JJAEP. While this limitation still provides broad access to the JJAEP administrator or designee, it does limit participation in such activities as a manifestation determination review, etc.

Chapter 37 of the Texas Education Code specifies methods by which school districts and county juvenile boards/JJAEPs must establish agreements through the use of memoranda of understanding. These MOUs are tools to resolve concerns and establish coordinated activities.

See section (b) above related to discussion of charter schools.

The law and this rule require that an ARD committee be convened at the

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of the provisions listed in TEC, §37.004(e), relating to offenses for which a school district may expel a student, an ARD committee meeting must be convened to reconsider placement of the student in the JJAEP. The reasonable notice of the ARD committee meeting must be provided consistent with 34 CFR, §300.345 and §300.503, and §89.1015 of this title (relating to Time Line for All Notices). If the JJAEP representative is unable to attend the ARD committee meeting, the representative must be given the opportunity to participate in the meeting through alternative means including conference telephone calls. The JJAEP representative may participate in the meeting to the extent that the meeting relates to the student's continued placement in the JJAEP.

request of the JJAEP administrator or designee when specific written notice is provided to the LEA regarding concerns that the student's educational or behavioral needs cannot be met in the JJAEP. The ARD committee then must reconsider the student's placement in the program. The ARD committee maintains the authority to determine appropriate educational placements for students with disabilities.

See section (b) above related to discussion of notice requirements.

Participation of the JJAEP administrator or designee is limited to issues related to the student's continued placement in the JJAEP.

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

(a) Requirement to implement. In addition to the requirements of 34 Code of Federal Regulations (CFR), §300.346(a)(2)(i) and (c), school districts and charter schools must implement the provisions of this section regarding the use of restraint and time-out. In accordance with the provisions of Texas Education Code (TEC), §37.0021 (Use of Confinement, Restraint, Seclusion, and Time-Out), it is the policy of the state to treat all students with dignity and respect.

The implementation of this rule section is required by school districts, charter schools and JJAEPs.

(b) Definitions.

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

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

(B) imminent, serious property destruction ~~that would constitute a felony under Texas Penal Code, §28.031~~

The expectation remains that any imminent property destruction be serious in nature.

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

This definition reflects the definition of time-out in Texas Education Code (TEC) §37.0021.

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

This definition reflects the definition of restraint in TEC 37.0021.

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period in a setting:

(A) that is not locked; and

(B) from which the student is not physically prevented from leaving.

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

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

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

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

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

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

(1) Not later than April [~~January~~] 1, 2003, a core team of personnel on each campus must be trained in the use of restraint, and the team must include a campus administrator or designee and any general or special education personnel likely to use restraint.

TEC §37.0021 makes the commissioner's rule on restraint and time-out applicable to all school employees, volunteers, and independent contractors. Therefore, the rule is applicable to security personnel and peace officers employed by schools. This means that when addressing non-emergency educational/behavioral situations that do not involve the enforcement of a law, security personnel and peace officers, just like other school personnel, are prohibited from restraining students. However, this rule does not affect an officer's ability to enforce a law or take a student into custody.

Restraint must be discontinued at the point the student no longer poses a threat of imminent, serious physical harm or imminent, serious property destruction.

The training timeline was changed in the adopted rule based on legitimate implementation concerns. The April date now gives LEAs approximately one year from the date of adoption of the rule to complete training requirements. However, based on the intent of the law, it is imperative that LEA personnel receive training in as timely a manner as possible.

Core team training will be required for all school campuses in the state. Since the very nature of restraint is in response to an emergency situation, and an emergency situation is not a predictable event, a campus would not be able to determine in advance that training would not be applicable to the campus. The core team should include at least the campus administrator or designee, a general educator, and a special educator.

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- (2) After April [January] 1, 2003, personnel called upon to use restraint in an emergency and who have not received prior training must receive training within 30 school days following the use of restraint.
- (3) Training on use of restraint must include prevention and de-escalation techniques and provide alternatives to the use of restraint.
- (4) All trained personnel shall receive instruction in [must have] current [knowledge of] professionally accepted practices and standards regarding behavior management and the use of restraint.
- (e) Documentation and notification on use of restraint. In a case in which restraint is used, school employees, volunteers, or independent contractors shall implement the following documentation requirements.
 - (1) On the day restraint is utilized, the campus administrator or designee must be [verbally] notified verbally or in writing regarding the use of restraint.
 - (2) On the day restraint is utilized, a good faith effort [an attempt] shall be made to verbally notify the parent(s) regarding the use of restraint.
 - (3) Written notification of the use of restraint must be placed in the mail or otherwise provided to the parent within one school day of the use of restraint.
 - (4) Written documentation regarding the use of restraint must be placed in the student's special education eligibility folder in a timely manner so the information is available to the ARD committee when it considers the impact of the student's behavior on the student's learning and/or the creation or revision of a behavioral intervention plan (BIP) [within one school day of the use of restraint]

While LEAs will be called upon to establish systems to ensure that this 30 school day training is completed within timelines, the model of service delivery will not be prescribed. It is not required that core teams provide the 30 school day training; however, the use of a trainer-of-trainers model may be an effective methodology.

Training guidelines and content will be disseminated through the Behavior and Discipline Management network under the decentralized leadership of the Region IV Education Service Center.

Wording was revised to provide local flexibility regarding communication techniques to be used, which might include options such as email or voice mail. Specific techniques for notification may be addressed in local operating guidelines.

The language of the rule was revised to reflect that more than a single attempt at notification is required.

The language of the rule was revised in response to comments that receipt of written notification by the parent within one school day is not always feasible. This notification must meet the requirements of this rule but is not required to meet the requirements of 34 CFR §300.345 or §300.503.

The language of the rule was revised to emphasize the educational purpose of documenting and filing information on the use of restraint in the student's special education eligibility folder.

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

(A) name of the student;

(B) name of the staff member(s) ~~member~~ administering the restraint;

(C) date of the restraint and the time the restraint began and ended;

(D) location of the restraint;

(E) nature of the restraint;

(F) a description of the activity in which the student was engaged immediately preceding the use of restraint;

(G) the behavior that prompted the restraint;

(H) the efforts made to de-escalate the situation and alternatives to restraint that were attempted; and

(I) information documenting parent contact and notification.

(f) Clarification regarding restraint. For the purposes of subsections (c)-(e) of this section, restraint does not include the use of:

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

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

This section of rule specifies the requirements related to written parent notification and documentation to the student's special education eligibility folder.

This section allows the appropriate use of individually prescribed devices that are necessary to promote normative body positioning and/or physical functioning. It is not necessary that a medical doctor provide a medical prescription related to the use of adaptive equipment in order for requirements of this subsection to be met.

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(3) limited physical contact or appropriately prescribed adaptive equipment to prevent a student from engaging in ongoing, repetitive self-injurious behaviors; or

This subsection was added to address concerns regarding the well-being of students who engage in self-injurious behaviors such as head banging or self-mutilation, as well as the potential onerous nature of ongoing documentation requirements related to interventions surrounding these behaviors. However, other methods to address these behaviors, such as re-direction or the teaching of replacement behaviors, are critical and must be used whenever possible to avoid or reduce the use of limited physical contact or adaptive equipment as referenced in this subsection.

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

This subsection was added to address concerns that the rule as proposed would preclude the use of seat belts and other safety equipment during student transportation.

(g) Use of time-out. A school employee, volunteer, or independent contractor may use time-out in accordance with subsection (b)(3) of this section with the following limitations.

TEC §37.0021 made commissioner's rules on restraint and time-out applicable to all school employees, volunteers, and independent contractors. Therefore, this would include any person employed by or under contract to a LEA.

(1) Physical force or threat of physical force shall not be used to place a student in time-out.

Federal regulations require that behaviors that impede the learning of the student or others be addressed in the IEP.

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

This subsection acknowledges that the repeated use of time-out can result in missed instructional time, thereby impacting the student's ability to benefit educationally.

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

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

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- (1) Not later than April ~~January~~ 1, 2003, general or special education personnel who implement time-out based on requirements established in a student's IEP and/or BIP must be trained in the use of time-out.
- (2) After April ~~January~~ 1, 2003, newly-identified personnel called upon to implement time-out based on requirements established in a student's IEP and/or BIP must receive training in the use of time-out within 30 school days of being assigned the responsibility for implementing time-out.
- (3) Training on the use of time-out must ~~not~~ be provided as part of a program which addresses a full continuum ~~separate and distinct training, must include information regarding the scope~~ of positive behavioral intervention ~~behavior interventions and~~ strategies, and must address the impact of time-out on the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.
- (4) All trained personnel shall receive instruction in ~~must have~~ current ~~knowledge of~~ professionally accepted practices and standards regarding behavior management and the use of time-out.
- (i) Documentation on use of time-out. Necessary documentation or data collection regarding the use of time-out, if any, must be addressed in the IEP or BIP. The admission, review, and dismissal (ARD) committee must use any collected data to judge the effectiveness of the intervention and provide a basis for making determinations regarding its continued use.
- (j) Student safety. Any behavior management technique and/or discipline management practice must be implemented in such a way as to protect the health and safety of the student and others. No discipline management practice may be calculated to inflict injury, cause harm, demean, or deprive the student of basic human necessities.

Training guidelines and content will be disseminated through the Behavior and Discipline Management network under the decentralized leadership of the Region IV Education Service Center.

The ARD committee, through development of the IEP or BIP, will determine whether it is necessary to document or collect data regarding the use of time-out for those students who have time-out in their IEPs or BIPs. The ARD committee also will determine any method for collecting data or documenting the use of time-out. Any collected data must be used for making determinations regarding the continued use of time-out.

Safety issues must always be a consideration in the implementation of behavior management techniques or discipline management practices.

Basic human necessities include, but are not limited to, the ability to breathe, access food and water, and manage bodily functions.

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~~(k) Data collection requirement. Beginning with the 2003-2004 school year, with the exception of actions covered by subsection (f) of this section, cumulative data regarding the use of restraint must be reported through the Public Education Information Management System (PEIMS).~~

~~[§89.1054. Seclusion.]~~

~~(a) Pursuant to Texas Education Code (TEC), §37.0021(b)(2), seclusion means a behavior management technique in which a student is confined in a locked box, locked closet, or locked room that:~~

~~(1) is designed solely to seclude a person; and~~

~~(2) contains less than 50 square feet of space.]~~

~~(b) In accordance with TEC, §37.0021(c), a school district employee or volunteer or an independent contractor of a district may not place a student in seclusion. This subsection does not apply to the use of seclusion in a facility to which the following law, rules, or regulations apply:~~

~~(1) the Children's Health Act of 2000, Public Law No. 106-310, any subsequent amendments to that Act, any regulations adopted under that Act, or any subsequent amendments to those regulations;~~

~~(2) 40 Texas Administrative Code (TAC) §§720.1001-720.1013, rules adopted by the Texas Department of Protective and Regulatory Services relating to behavior intervention; or~~

~~(3) 25 TAC §412.308(e), a rule adopted by the Texas Department of Mental Health and Mental Retardation relating to the use of restraint and seclusion.]~~

~~(c) Neither TEC, §37.0021(c), nor this section governs seclusion or confinement of a student that does not fall within the definition of seclusion set out in subsection (a) of this section. However, school districts must at all times comply with local fire and safety codes.]~~

Data will be collected at an individual student level to document the use of restraint by LEAs. The specifics of data collection methodologies will be discussed as they are developed.

This section of rule was withdrawn based on a determination that TEC §37.0021 does not give the agency explicit rule-making authority on the issue of seclusion. However, TEC §37.0021 clearly prohibits the use of confinement or locked, seclusionary time-out for students with disabilities.

Adopted Amendments to 19 TAC Chapter 89.

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§89.1070. Graduation Requirements.

- (a) Graduation with a regular high school diploma under subsection (b) or (d) of this section terminates a student's eligibility for special education services under this subchapter and Part B of the Individuals with Disabilities Education Act (IDEA), 20 United States Code, ~~§§1400~~ ~~[[§14.01]~~ et seq. In addition, as provided in Texas Education Code (TEC), §42.003(a), graduation with a regular high school diploma under subsection (b) or (d) of this section terminates a student's entitlement to the benefits of the Foundation School Program.
- (b) A student receiving special education services may graduate and be awarded a high school diploma [~~only~~] if:
 - (1) the student has satisfactorily completed the state's or district's (whichever is greater) minimum curriculum and [academic] credit requirements for graduation applicable to students in general education, including satisfactory performance on the exit level assessment instrument; or
 - (2) the [The] student has satisfactorily completed the state's or district's (whichever is greater) minimum curriculum and [academic] credit requirements for graduation applicable to students in general education and has been exempted from the exit-level assessment instrument under TEC, §39.027(a)(2)(B), [because modifications and accommodations provided during instruction would render the result of the assessment invalid.]
- (c) A student receiving special education services may also graduate and receive a regular high school diploma when the student's admission, review, and dismissal (ARD) committee has determined that the student has successfully completed:
 - (1) the student's individualized education program (IEP) and met one of the following conditions:
 - (A) full-time employment, based on the student's abilities and local employment opportunities, in addition to sufficient self-help skills to enable the student to maintain the employment without direct and ongoing

The amendment further clarifies that graduation under subsection (c), related to IEP graduation, does not terminate a student's eligibility for special education services (reference subsection (i) below) since a student graduating under subsection (c) has not met the all general education and course requirements applicable to students who do not receive special education services.

The rule further clarifies that students graduating under subsection (b) are required both to complete the minimum number of credits required for students without disabilities and receive those credits based on participation in the same curriculum as students without disabilities.

This subsection mirrors the requirements in subsection (b)(1) but also acknowledges those situations in which a student is exempted from the exit-level assessment instrument.

Subsection (c)(1) essentially mirrors previous rule language.

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educational support of the local school district;

(B) demonstrated mastery of specific employability skills and self-help skills which do not require direct ongoing educational support of the local school district; or

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

(2) the state's or district's (whichever is greater) minimum credit requirements for students without disabilities; and

(3) the state's or district's minimum curriculum requirements to the extent possible with modifications/substitutions only when it is determined necessary by the ARD committee for the student to receive an appropriate education.

~~[(c) A student receiving special education services may also graduate and receive a regular high school diploma when the student's admission, review, and dismissal (ARD) committee has determined that the student has successfully completed the student's individualized education program (IEP), including the district's minimum credit requirements for students without disabilities. Successful completion of an IEP occurs when one of the following conditions has been met:]~~

~~[(1) full-time employment, based on the student's abilities and local employment opportunities, in addition to sufficient self-help skills to enable the student to maintain the employment without direct and ongoing educational support of the local school district;]~~

~~[(2) demonstrated mastery of specific employability skills and self-help skills which do not require direct ongoing educational support of the local school district; or]~~

~~[(3) access to services which are not within the legal responsibility of public education, or employment or educational options for~~

The rule clarifies that students graduating under subsection (c) must complete the minimum number of credits required for students without disabilities.

The rule clarifies that students graduating under subsection (c) must, to the extent possible as determined by the ARD committee, receive their credits based on participation in the same curriculum as students without disabilities.

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which the student has been prepared by the academic program.]

- (d) A student receiving special education services may also graduate and receive a regular high school diploma upon the ARD committee determining that the student no longer meets age eligibility requirements and has completed the requirements specified in the IEP.
- (e) When considering a student's graduation under subsection (c) of this section, the student shall be evaluated ~~[ARD committee shall conduct an evaluation]~~ prior to graduation as required by 34 CFR, §300.534(c), and the ARD committee shall consider the evaluation, the views of the parent and/or student as appropriate, and , when appropriate, seek in writing and consider written recommendations from ~~[appropriate]~~ adult service agencies ~~[and the views of the parent and, when appropriate, the student]~~ .
- (f) Students who ~~[are allowed to]~~ participate in graduation ceremonies but who are not graduating under subsection (c) of this section and who will remain in school to complete their education do not have to be evaluated in accordance with subsection (e) of this section.

The amendment aligns federal requirements related to the consistent interpretation of graduation and evaluation requirements. Since graduation under subsection (c), related to IEP graduation, does not terminate a student's eligibility for special education services (reference subsection (i) below), and because a student graduating under subsection (c) has not met all general education and course requirements applicable to students who do not receive special education services, it cannot be determined without further consideration that a student has received a free, appropriate public education (FAPE) prior to graduation. The reevaluation now required under subsection (e) must follow the procedures required for evaluation and reevaluation found at 34 CFR 300.536, and prior to graduation, it must be determined that a student no longer has a need for special education and has received a FAPE.

The language regarding the consideration of "the views of the parent and/or student, as appropriate," acknowledges that the involvement and participation of parents and students will vary in individual circumstances (i.e., based on whether rights have transferred to an adult student or a parent has obtained guardianship, and in consideration of circumstances in which parents and students may continue collaborate on educational decision making even after rights have transferred).

This subsection clarifies that participation in graduation ceremonies alone does not trigger the evaluation requirement in subsection (e) if the student is not receiving a diploma.

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- (g) ~~(f)~~ Employability and self-help skills referenced under subsection (c) of this section are those skills directly related to the preparation of students for employment, including general skills necessary to obtain or retain employment.
- (h) ~~(g)~~ Students with disabilities who are eligible to take the exit level assessment instrument but have not performed satisfactorily are eligible for instruction in accordance with the TEC, §39.024.
- (i) ~~(h)~~ For students who receive a diploma according to subsection (c) of this section, the ARD committee shall determine needed educational services upon the request of the student or parent to resume services, as long as the student meets the age eligibility requirements.

Division 5. Special Education and Related Service Personnel

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

- (a) All special education and related service personnel shall be certified, endorsed, or licensed in the area or areas of assignment in accordance with 34 Code of Federal Regulations (CFR), §300.23 and §300.136; the Texas Education Code (TEC), §§21.002, 21.003, and 29.304; or appropriate state agency credentials.
- (b) A teacher who holds a special education certificate or an endorsement may be assigned to any level of a basic special education instructional program serving eligible students 3-21 years of age, as defined in §89.1035(a) of this title (relating to Age Ranges for Student Eligibility), in accordance with the limitation of their certification, except for the following.
 - (1) Persons assigned to provide speech therapy instructional services must hold a valid Texas Education Agency (TEA) certificate in speech and hearing therapy or speech and language therapy, or a valid state license as a speech/language pathologist.

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- (2) Teachers holding only a special education endorsement for early childhood education for children with disabilities shall be assigned only to programs serving infants through Grade 6.
- (3) Teachers assigned full-time to teaching students who are orthopedically impaired or other health impaired with the teaching station in the home or a hospital shall not be required to hold a special education certificate or endorsement as long as the personnel file contains an official transcript indicating that the teacher has completed a three-semester-hour survey course in the education of students with disabilities and three semester hours directly related to teaching students with physical impairments or other health impairments.
- (4) Teachers certified in the education of students with visual impairments must be available to students with visual impairments, including deaf-blindness, through one of the school district's instructional options, a shared services arrangement with other school districts, or an education service center (ESC). A teacher who is certified in the education of students with visual impairments must attend each admission, review, and dismissal (ARD) committee meeting or individualized family service plan (IFSP) meeting of a student with a visual impairment, including deaf-blindness.
- (5) 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, a shared services arrangement with other school districts, or an ESC. A teacher who is certified in the education of students with auditory impairments must attend each ARD committee meeting or IFSP meeting of a student with an auditory impairment, including deaf-blindness.

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- (6) The following provisions apply to physical education.
 - (A) When the ARD committee has made the determination and the arrangements are specified in the student's individualized education program (IEP), physical education may be provided by the following personnel:
 - (i) special education instructional or related service personnel who have the necessary skills and knowledge;
 - (ii) physical education teachers;
 - (iii) occupational therapists;
 - (iv) physical therapists; or
 - (v) occupational therapy assistants or physical therapy assistants working under supervision in accordance with the standards of their profession.
 - (B) When these services are provided by special education personnel, the district must document that they have the necessary skills and knowledge. Documentation may include, but need not be limited to, inservice records, evidence of attendance at seminars or workshops, or transcripts of college courses.
- (7) Teachers assigned full-time or part-time to instruction of students from birth through age two with visual impairments, including deaf-blindness, shall 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, shall be certified in education for students who are deaf and severely hard of hearing. Other certifications for serving these students shall require prior approval from TEA.

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- (8) 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. 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. Aides paid from state administrative funds may be assigned to the Special Education Resource System (SERS), the Special Education Management System (SEMS), or other special education clerical or administrative duties.
- (d) Interpreting services for students who are deaf shall be provided by an interpreter who is certified in the appropriate language mode(s), if certification in such mode(s) is available. If certification is available, the interpreter must be certified by the Registry of Interpreters for the Deaf or the Texas Commission for the Deaf and Hard of Hearing, unless the interpreter has been granted an emergency permit by the commissioner of education to provide interpreting services for students who are deaf. The commissioner shall consider applications for the issuance of an emergency permit to provide interpreting services for students who are deaf on a case-by-case basis in accordance with requirements set forth in 34 CFR, §300.136, and standards and procedures established by the TEA. In no event will an emergency permit allow an uncertified interpreter to provide interpreting services for more than a total of three school years to students who are deaf.
- (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 ~~[or by the Association for Education and Rehabilitation of the Blind and Visually Impaired].~~

The Association for Education and Rehabilitation of the Blind and Visually Impaired (AER) is a professional organization that historically certified orientation and mobility specialists. However, it no longer does so. All orientation and mobility specialists who originally were certified under this organization were required to transfer their certification to the Academy of Certification of Vision Rehabilitation and Education Professionals (the Academy) by December 1, 2001. As of that date, the AER ceased to provide any certification recognition.

Division 6. Regional Education Service Center Special Education Programs

~~§89.1141. Regional Education Service Center Special Education Programs Component.~~

- ~~[(a) Each regional education service center (ESC) shall have a special education program component.]~~
- ~~[(b) Each ESC shall provide activities and services related to special education based on an annual region-wide needs assessment that includes, but is not limited to, the following priority areas:]~~
 - ~~[(1) implementation of, and compliance with, state and federal law and regulations;]~~
 - ~~[(2) follow up technical assistance to local education agencies being monitored;]~~
 - ~~[(3) program planning, including personnel development and long-range planning;]~~
 - ~~[(4) support to school districts in instructional program and curriculum development;]~~
 - ~~[(5) development of alternatives to private residential placements;]~~
 - ~~[(6) technical assistance and training for school district staff in the selection and use of instructional materials and adaptive assistive technology;]~~
 - ~~[(7) technical assistance and inservice training in support of local district direct service providers, such as assessment and related service personnel;]~~
 - ~~[(8) direct and/or supportive services to programs for students with visual impairments; and]~~
 - ~~[(9) direct and/or supportive services to preschool programs for children with disabilities.]~~

Adopted Amendments to 19 TAC Chapter 89.

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- ~~[(c) Each ESC shall maintain a child find/serve program including:
 - ~~[(1) referral and tracking of previously unserved students between birth and 21 years of age;]~~
 - ~~[(2) follow through of students referred;]~~
 - ~~[(3) resource identification; and]~~
 - ~~[(4) interagency coordination.]~~~~
- ~~[(d) Regional ESCs may serve as fiscal agents for those school districts which choose to receive such services through the ESCs.]~~
- ~~[(e) A minimum of one staff member certified in the education of students with visual impairments shall be employed by each ESC.]~~
- ~~[(f) The ESC shall not charge school districts for those services for which the ESC has been funded.]~~
- ~~[(g) Each ESC shall provide school districts with technical assistance and, based on identified needs, a comprehensive system of personnel development.]~~
- ~~[(h) For the purposes of this subchapter, ESCs shall be considered to be intermediate educational units as defined in federal regulations.]~~

§89.1141. Education Service Center Regional Special Education Leadership.

- ~~(a) Each regional education service center (ESC) will provide leadership, training, and technical assistance in the area of special education for students with disabilities in accordance with the Texas Education Agency's (TEA) focus on increasing student achievement and Texas Education Code (TEC), §8.051(d)(2) and (5), and will assist TEA in the implementation of 34 Code of Federal Regulations (CFR) §300.382 and §300.555. [ESCs will work with the TEA to promote and implement leadership and information dissemination activities to school districts, charter schools, parents, and communities.]~~

This section of rule acknowledges the partnership between the Agency and education service centers, and highlights the responsibility of the ESCs to provide leadership, training and technical assistance in the area of special education.

TEC §8.051(d)(2) and (5), reference ESC requirements to provide training and assistance in the special education program and assistance specifically designed for a school district that is considered out of compliance with state or federal special education requirements based on the Agency's most recent compliance review of the district's special education program. The references to 34 CFR §300.382 and §300.555 relate to the responsibility of ESCs to assist the TEA in implementing certain CSPD and technical assistance and training requirements.

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- (b) Each regional ESC will provide technical assistance, support, and training in the area of special education to school districts, [general and special education and related service personnel, administrators, paraprofessionals, and parents of students with disabilities.] based on the results of a comprehensive needs assessment process. Each regional ESC will continue to serve as first point of contact for school districts, parents, and other community stakeholders, and will, in accordance with 34 CFR §300.382(j), provide for the joint training of parents and special education, related services, and general education personnel.
- (c) Regional ESC activities and responsibilities will be in accordance with current instructions, program guidelines, and program descriptions included in the ESC Performance Contract and Application, which will be made accessible to the public through the TEA website.
- (d) The ESC must utilize available TEA funding to implement activities and address needs identified under subsections (a)-(c) of this section [and Texas Education Code (TEC), §8.051(d)(5)]. If additional funding is needed to implement supplementary or enhanced activities identified through the regional needs assessment process, ESCs may access and utilize alternate sources of funding. Any charges must be determined only after priorities have been established through input from affected school districts, including data collected from parents and communities through partnerships with school districts [stakeholders].
- (e) When an ESC provides leadership, training, and support pertaining to education and related services for students with visual impairments, directly or through contract, the personnel providing such services must be appropriately certified as identified in current program guidelines included in the ESC Performance Contract and Application, regardless of the fund source used to fund the service/personnel.

This subsection clarifies that technical assistance, support, and training will be provided based on the results of a comprehensive needs assessment process and that ESCs will continue to serve in their role as first point of contact related to technical assistance, support, and training. Additionally, the rule clarifies the role of ESCs in providing for the CSPD requirement related to the joint training of parents and special education, related services, and general education personnel.

The ESC Performance Contract and Application is analogous to the SAS Administrator's Guide and application utilized by LEAs. These forms and documents will be placed on the TEA website.

If, through a regional needs assessment process, it is determined that supplementary or enhanced activities need to be provided which cannot be funded with available TEA funding, ESCs may charge for these supplemental services. However, charges and areas in which charges will occur can be determined by ESCs only after input is collected from affected school districts, which includes information obtained from parents and communities through partnerships with school districts.

Each ESC no longer is required to employ a minimum of one staff member certified in the education of students with visual impairments. ESCs will continue to use regional needs assessment processes to determine needed services and supports in the area, but the method of ensuring the provision of these services will be somewhat more flexible (i.e., contract for services vs. establish an employment relationship). However, when leadership, training, and support pertaining to education and related services for students with visual impairments is provided, either directly or through contract, the personnel providing such services must be appropriately certified.

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TEA Commentary

- ~~[(e) Personnel assignments through State Supplemental Visually Impaired funds require appropriate certification as identified in current program guidelines included in the ESC Performance Contract and Application.]~~
- ~~[(f) Regional ESCs may serve as fiscal agent for shared services arrangements in accordance with procedures established under §89.1075(e) of this title (relating to General Program Requirements and Local District Procedures).]~~
- ~~[(g) For the purposes of this subchapter, ESCs shall be considered to be educational service agencies as defined in federal regulations.]~~

Division 7. Resolution of Disputes Between Parents and School Districts

§89.1152. Presentment.

- ~~[(a) This section will take effect on August 1, 2003.]~~
- ~~[(b) Pursuant to the policy to encourage and support the resolution of any dispute at the lowest level possible, and in a prompt, efficient, and effective manner, no issue may be raised at a due process hearing unless it was first raised at an admission, review, and dismissal (ARD) committee meeting. Hearing officers shall dismiss any hearing request upon satisfactory proof that the issues raised in the hearing were not first presented to the ARD committee.]~~

The change in this requirement is in alignment with Agency practice in other areas in regard to establishing employment and/or staffing mandates for ESCs, and it is an effort to provide flexibility to ESCs on the method of service delivery. However, the Agency will continue to provide financial support to ESCs to implement leadership, training, and support pertaining to education and related services for students with visual impairments, and there is no intent on the part of the Agency for local programs to receive fewer services under this model than previously were provided.

This subsection continues to allow ESCs to serve as fiscal agents for shared services arrangements subject to Agency procedures.

Based on a letter of interpretation to the TEA from the Office of Special Education Programs, Department of Education, proposed §89.1152 was withdrawn.