

**Section 8 - ADMINISTRATION SECTION**  
**Table of Contents**

<b>I.</b>	<b>Scope and Applicability of Special Education.....</b>	<b>802</b>
<b>II.</b>	<b>FAPE – Free Appropriate Public Education.....</b>	<b>802</b>
	Full Educational Opportunity Goal -FEOG and Program Options.....	803
	Child Find (located in Section 1-Referral)	
<b>III.</b>	<b>Special Education Defined .....</b>	<b>804</b>
<b>IV.</b>	<b>Personnel.....</b>	<b>805</b>
	Personnel Qualifications.....	805
	Highly Qualified Special Education Teacher (NCLB).....	808
	Personnel Development.....	809
<b>V.</b>	<b>Curriculum for Students with Disabilities .....</b>	<b>809</b>
	Texas Essential Knowledge and Skills (TEKS).....	809
	Scientific Research Based Interventions/Strategies.....	810
<b>VI.</b>	<b>Public Education Information Management System (PEIMS) .....</b>	<b>811</b>
<b>VII.</b>	<b>PBMAS – Performance Based Monitoring Analysis System.....</b>	<b>811</b>
<b>VIII.</b>	<b>Collaboration with Agencies Regarding MOU’s.....</b>	<b>815</b>
<b>IX.</b>	<b>Transfer of Assistive Technology Devices.....</b>	<b>815</b>
<b>X.</b>	<b>Funding.....</b>	<b>817</b>
	A. Federal Funds.....	817
	Early Intervening Services.....	817
	Supplanting.....	817
	Maintenance of State Support.....	818
	Waiver.....	818
	Use of Amount (Excess Costs) .....	819
	Compliance – payments.....	820
	Joint Establishment of Eligibility.....	820
	Maintenance of Effort (MOE) .....	820
	Exception to MOE.....	820
	Adjustment to Local Fiscal Effort.....	821
	Schoolwide Programs.....	821
	Permissive Use of Funds.....	822
	B. State Funds.....	822

Distribution.....	822
Allowable Expenditures.....	823
Special Education Allotment.....	823
C. Hospitals.....	825
D. JJAEP.....	825
E. Nonpublic – Private Schools.....	826
F. Noneducational Funds.....	826
G. Public Insurance.....	826
H. TSD – Deaf or Hard of Hearing.....	827
I. RDSPD - Regional Day School Programs for the Deaf.....	829
J. TSBVI – Visually Impaired.....	829
K. Residential.....	831
<b>XIII. Interventions and Sanctions.....</b>	<b>831</b>
<b>XIV. Shared Service Arrangements.....</b>	<b>832</b>
<b>XV. Charter Schools.....</b>	<b>832</b>

## 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.

**DISD 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 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 those 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.
  - (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))

**§300.109 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))

**§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.

(Authority: 20 U.S.C. 1412(a)(2), 1413(a)(1))

**III. SPECIAL EDUCATION DEFINED**

**§300.38 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 he or she can meet the educational standards within the jurisdiction of DISD 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--**
    - (i) 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; and**
    - (ii) Includes vocational and technical education.**
  - (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)

**§300.41 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. (Authority: 20 U.S.C. 1401(33))

## **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--
  - (1) Create a right of action on behalf of an individual student for the failure of a particular SEA or LEA staff person to be highly qualified; or
  - (2) 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.
 (Authority: 20 U.S.C. 1412(a)(14))

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. A person may perform specific services within those professions for a school district only if the person holds the appropriate credential from the appropriate state agency.

TAC §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.
  - (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.
- (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.
- (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.

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.

**§300.18 Highly qualified special education teacher.**

- (a) **General.** For any public elementary or secondary school special education teacher, 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 highly qualified special education teachers.**
  - (1) **When used with respect to any public elementary school or secondary school special education teacher teaching in a State, highly qualified means 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 requirements 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 (b)(2) of this section.**
- (c) **Requirements for highly qualified special education teachers teaching to alternate achievement standards.**

**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, as determined by the State, needed to effectively teach to those standards.
- (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 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 covering multiple subjects.
- (e) **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.
- (f) **Definition for purposes of the ESEA.** A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.
- (g) The requirements in this section do not apply to teachers hired by private elementary schools and secondary schools. (Authority: 20 U.S.C. 1401(10))

Also reference NCLB [Section 1119. Qualifications](#) at: [www.edgov/policy/elsec/leg/esea02/index.html](http://www.edgov/policy/elsec/leg/esea02/index.html)

#### **§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. (Authority: 20 U.S.C. 1413(a)(3))

## **V. CURRICULUM FOR STUDENTS WITH DISABILITIES**

*The Devine Independent School District 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.*

*DISD 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, DISD must provide each student with disabilities the opportunity to make satisfactory progress in the essential elements 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 DISD 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 - DISD 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**

*DISD 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. DISD will remain diligent in following requirements specified in the PEIMS manual.*

## **VII. PBMAS – PERFORMANCE BASED MONITORING ANALYSIS SYSTEM**

*For continuous updated information, see the TEA website; [www.tea.state.tx.us](http://www.tea.state.tx.us) and review the PBMAS Manual.*

### **§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.**  
(Authority: 20 U.S.C. 1412(a)(15))

### **§300.229 Disciplinary information.**

- (a) **The State may require that a DISD 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))**

**§300.173 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.

(Authority: 20 U.S.C. 1412(a)(24))

**§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.

(Authority: 20 U.S.C. 1418(d))

**§300.211 Information for SEA.**

The LEA 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 LEA 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. In 2005-2006, it is anticipated that the ongoing development of PBMAS will 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;*
- *State Developed Alternative Assessment (SDAA) II;*
- *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 §300.112 is implemented by each public agency.**
- (b) **If there is evidence that a public agency makes placements that are inconsistent with §300.114, the SEA 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.

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

- (a) DISD will 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).

**VIII. COLLABORATION WITH AGENCIES REGARDING MOU's**

*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. DISD will abide by the requirements of each memorandum including:*

- a. *coordination between ECI, Regional Day School Program for the Deaf (RDSPD), and the district*
- b. *interagency coordination of transition services to students with disabilities (coordination between TCB, TDHS, TDMHMR, TEA, TEC, TRC, and TDPRS)*
- 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.)*
- d. *MOU defining responsibilities to children who are medically, fragile (coordination between TEA, TCB, TDH, TDHS, TDMHMR, TDPRS, and ECI.)*
- e. *Memorandum of Understanding on Coordination of Services to Disabled Persons. TAC §89.1100.*
- f. *Texas School for the Deaf Memorandum of Understanding, TEC §29.315.*

**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.
- (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), §300.505. 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, §300.345(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.

## **X. FUNDING**

### **A. Federal Funds**

#### **§300.226 Early intervening services.**

- (a) **General.** An LEA may not use more than 15 percent of the amount such agency receives under Part B of the Act for any fiscal year, less any amount reduced by the agency 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, DISD 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; and
  - (2) The number of children served under this section who 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.  
(Authority: 20 U.S.C. 1412(a)(17))

**§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.
- (Authority: 20 U.S.C. 1412(a)(17)(C), (18)(C)(ii))

**§300.202 Use of amounts.**

- (a) **General.** Amounts provided to DISD 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 DISD 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 DISD 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, DISD 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. (Authority: 20 U.S.C. 1401(8))

**§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 DISD 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))

**§300.204 Exception to maintenance of effort.**

Notwithstanding the restriction in §300.203(a), DISD may reduce the level of expenditures by DISD 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).  
(Authority: 20 U.S.C. 1413(a)(2)(B))

**§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 DISD exercises the authority under paragraph (a) of this section, DISD 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 DISD 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 DISD for early intervening services under §300.226 shall count toward the maximum amount of expenditures that DISD 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 DISD 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--
- (1) (i) The amount received by DISD under Part B of the Act for that fiscal year; divided by
  - (ii) The number of children with disabilities in the jurisdiction of DISD; 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.** DISD 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**     [\*\(Legislature is in session summer of 2005 – watch for updates\)\*](#)

**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 shall be developed by the commissioner of education and included in the daily register for pupil attendance accounting.
- (b) State special education funds shall be distributed to school districts on the basis of ADA of full-time equivalents of eligible students served in accordance with §129.21 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes).
- (c) The special education attendance shall be converted to contact hours by instructional arrangement and then to full-time equivalents. The full-time equivalent for each instructional arrangement is multiplied by the school district's adjusted basic allotment 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 shall be divided by 30 to determine the full-time equivalents. Special education full-time equivalents generated shall be deducted from the school district's ADA for purposes of the regular education allotment.
- (d) The receipt of special education funds shall be contingent upon the operation of an approved comprehensive special education program in accordance with state and federal laws and regulations. No district may divert special education funds for other purposes, with the exception of administrative costs as defined in Chapter 105, Subchapter B, of this title (relating to Maximum Indirect Cost Allowable on Certain Foundation School Program Allotments). Funds generated by full-time equivalents in one instructional arrangement may be spent on the overall special education program and are not limited to the instructional arrangement which generated the funds. The district must

maintain separate accountability for the total state special education program fund within the general fund.

- (e) A special education fund balance may be carried over to the next fiscal year but must be expended on the special education program in the subsequent year. State special education carryover funds cannot be used for administrative costs.
- (f) Students who are at least three, but younger than 22, years of age on September 1 of the current scholastic year who participate in the regional day school program for the deaf may be counted as part of the district's ADA if they receive instruction from the basic program for at least 50% of the school day.
- (g) Students from birth through age two with a visual or auditory impairment or both who are provided services by the district according to an individual family services plan (IFSP) shall be enrolled on the district home or regional day school campus and shall be considered eligible for ADA on the same basis as other students receiving special education services.
- (h) Funding for the mainstream special education instructional arrangement shall be based on the average daily attendance of the students in the arrangement multiplied by the adjusted basic allotment/adjusted allotment (ABA/AA) and the 1.1 weight. The attendance shall not be converted to contact hours/full-time equivalents as with the other instructional arrangements.

**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. In accordance with 34 Code of Federal Regulations, §300.382(j), 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.** *(Legislature is in session summer of 2005 – watch for updates)*  
 Acts 2003, 78th Leg., ch. 201, § 1(1) **repealed** this section effective September 1, 2004, provided the legislature enacts a law that creates a comprehensive school finance system.

(a) 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, mild and moderate, regular campus	3.0
Self-contained, severe, regular 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) Each year, the TEA shall make and disseminate to each school district a list of those districts that maintain for two successive years a ratio of full-time equivalent students placed in partially or totally self-contained classrooms to the number of full-time equivalent students placed in resource room or mainstream instructional arrangements that is 25 percent higher than the statewide average ratio.
- (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.

### **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, DISD 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 DISD 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.** DISD 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.** DISD 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.
- (Authority: 20 U.S.C. 1412(a)(10)(A))

## **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 insurance.**

- (1) DISD may use the Medicaid or other public insurance benefits programs in which a child participates to provide or pay for services required under this part, as permitted under the public 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, DISD--
  - (i) May not require parents to sign up for or enroll in public 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 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 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 insurance; or
    - (D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and
  - (iv) Must obtain parental consent consistent with §300.622.

#### **(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, DISD may access a parent's private insurance proceeds only if the parent provides informed consent consistent with §300.9.
- (2) Each time DISD proposes to access the parent's private insurance proceeds, DISD must--
  - (i) Obtain parental consent in accordance with paragraph (e)(1) of this section; and
  - (ii) Inform the parents that their refusal to permit DISD to access their private insurance does not relieve DISD 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 DISD is unable to obtain parental consent to use the parent's private insurance, or public insurance when the parent would incur a cost for a specified service required under this part, to ensure FAPE DISD 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 insurance if the parent would incur a cost, DISD may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).

#### **(g) Proceeds from public or private insurance.**

- (1) Proceeds from public or private insurance will not be treated as program income for purposes of 34 CFR 80.25.
- (2) If DISD 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 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 insurance program.

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

## **H. TSD -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.
- (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 – Visually Impaired**

**§300.210 Purchase of instructional materials.**

- (a) **General.** Not later than December 3, 2006, two years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, 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.
  - (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 for whom the NIMAC may not provide assistance, receive those instructional materials in a timely manner.  
(Authority: 20 U.S.C. 1413(a)(6))

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 adopt the National Instructional Materials Accessibility Standard (NIMAS) 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.
- (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 for whom the NIMAC may not provide assistance to the SEA, receive those instructional materials in a timely manner.
- (c) **Preparation and delivery of files.** If an SEA chooses to coordinate with the NIMAC, not later than December 3, 2006, two years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, the agency, 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--
  - (1) 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
  - (2) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.
- (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.** In this section and §300.210--
  - (1) **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;
  - (2) **National Instructional Materials Access Center or NIMAC** means the center established pursuant to section 674(e) of the Act;
  - (3) **National Instructional Materials Accessibility Standard or NIMAS** has the meaning given the term in section 674(e)(3)(B) of the Act; and
  - (4) **Specialized formats** has the meaning given the term in section 674(e)(3)(D) of the Act.  
(Authority: 20 U.S.C. 1412(a)(23))

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

**XIII. INTERVENTIONS AND SANCTIONS**

**TAC §89.1076. Interventions and Sanctions.**

The Texas Education Agency (TEA) shall establish and implement a system of interventions and sanctions, in accordance with the Individuals with Disabilities Education Act, 20 USC, §§1400 et seq.,

Texas Education Code (TEC), §29.010, and TEC, Chapter 39, as necessary to ensure compliance with federal and state requirements regarding the implementation of special education and related services. In accordance with TEC, §39.131(a), the TEA may combine any intervention and sanction. The system of interventions and sanctions will include, but not be limited to, the following:

- (1) on-site review for failure to meet program or compliance requirements;
- (2) required fiscal audit of specific program(s) and/or of the district, paid for by the district;
- (3) required submission of corrective action(s), including compensatory services, paid for by the district;
- (4) required technical assistance from the education service center, 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; and/or
- (11) lowering of the special education compliance status and/or the accreditation rating of the district.

#### **XIV. 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.

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

#### **XV. CHARTER SCHOOLS**

**§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.  
(Authority: 20 U.S.C. 1413(a)(5))