

The Texas Education Agency (TEA) proposes amendments to §89.1035, 89.1053, and 89.1070, concerning clarification of provisions in federal regulations and state law. The proposed amendment to §89.1053 would implement Senate Bill (SB) 133, 88th Texas Legislature, Regular Session, 2023. The proposed amendments to §89.1035 and §89.1070 would clarify graduation requirements for students receiving special education and related services as well as remove outdated language.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Section 89.1035 addresses age ranges for student eligibility for special education and related services. The proposed amendment would update cross references of proper Taser on a student to another person. The proposed amendment would add new §89.1053(1) to address the requirements of SB 133. TEA also plans to engage in stakeholder communications over the next several months to review §89.1053 and potentially propose additional changes at a later date.

Section 89.1070 addresses graduation requirements for students receiving special education and related services. The proposed amendment would clarify the requirements based on questions from stakeholders and remove obsolete language.

The proposed amendment to §89.1070(a) would clarify when a student's eligibility for special education services terminates.

The proposed amendment to §89.1070(b) would clarify the expectations around the conditions that make a student eligible to graduate. Subsection (b)(1) would be modified to clarify that this condition equates to the same expectation for graduation as students without disabilities. The proposed amendment would clarify that this condition equates to the same expectation for graduation as students without disabilities. Conditions in subsection (b)(3) would be amended to reflect graduation eligibility for a student who has received modified content or curriculum and completed their individualized education program.

The proposed amendment to §89.1070(d) would state that a student in Grade 11 or 12 who has failed to achieve satisfactory performance on no more than two state assessments would be eligible to graduate under the first condition described in §89.1070(b)(1).

Section 89.1070(e) and (f), related to students who entered Grade 9 before the 2014-2015 school year, would be deleted.

Proposed new §89.1070(e) would specify that if a student reaches maximum age eligibility but has not met the requirements for graduation, the student may receive a certificate of attendance.

Proposed new §89.1070(f) would address the summary of academic achievement and functional performance that must be provided to students who are graduating.

Section 89.1070(g) would be modified and new subsection (h) would be added to provide additional requirements for the summary of performance.

Revisions would be proposed throughout the rules for clarity and consistency in terminology and to delete outdated information.

**FISCAL IMPACT:** Justin Porter,

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand and limit existing regulations. The proposed amendment to §89.1053 would add information related to restrictions on peace officers and security personnel in alignment with SB 133, 88th Texas Legislature, Regular Session, 2023. The proposed amendments to §89.1035 and §89.1070 would clarify graduation requirements for students receiving special education and related services and remove outdated language.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of

for purposes of special education services; TEC, §29.005, which establishes criteria for developing a student's individualized education program prior to a student enrolling in a special education program; TEC, §30.081, which establishes the legislative intent concerning regional day schools for the deaf; TEC, §37.0021, which establishes criteria for the use of confinement, restraint, seclusion, and time-out; TEC, §37.0023, which establishes criteria for prohibited aversive behavior techniques; TEC, §39.023, which





(g) Use of time-out. A school employee, volunteer, or independent contractor may use time-out in accordance

the use of restraint by any peace officer performing law enforcement duties on school property or during a school-sponsored or school-related activity.

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

(1)

(C) the [The] student has access to services or other supports that are not within the legal responsibility of public education, including [or] employment or postsecondary education established through transition planning [educational options for which the student has been prepared by the academic program].

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

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

- (1) satisfactorily completes the requirements for graduation under the Foundation High School Program specified in §74.12 of this title as well as the additional credit requirements in mathematics, science, and elective courses as specified in §74.13(e) of this title with or without modified curriculum;
- (2) satisfactorily completes the courses required for the endorsement under §74.13(f) of this title without any modified curriculum or with modification of the curriculum, provided that the curriculum, as modified, is sufficiently rigorous as determined by the student's ARD committee; and
- (3) performs satisfactorily as established in [the] TEC, Chapter 39, on the required end-of-course assessment instruments unless the student's ARD committee determines that satisfactory performance is not necessary.

(d) A [Notwithstanding subsection (c)(3) of this section, a] student receiving special education services classified in Grade 11 or 12 who has taken each of the state assessments required by Chapter 101, Subchapter CC, of this title (relating to Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program) or Subchapter DD of this title (relating to Commissioner's Rules Concerning Substitute Assessments for Graduation) but failed to achieve satisfactory performance on no more than two of the assessments is eligible to receive a diploma under subsection (b)(1) of this section [an endorsement if the student has met the requirements in subsection (c)(1) and (2) of this section].

~~(e) A student who has reached maximum age eligibility in accordance with §89.1035 of this title without meeting the credit, curriculum, and assessment requirements specified in subsection (b) of this section is not eligible to receive a diploma but may receive a certificate of attendance as described in TEC, §28.025(f).~~

~~(f) A summary of academic achievement and functional performance must be provided prior to exit from public school for students who meet one of the following conditions:~~

- ~~(1) a student who has met requirements for graduation specified by subsection (b)(1) of this section or who has exceeded the maximum age eligibility as described by §89.1035 of this title; or~~
- ~~(2) a student who has met requirements for graduation specified in subsection (b)(2) or (b)(3)(A), (B), or (C) of this section. Additionally, a student meeting this condition is entitled to an evaluation as described in 34 Code of Federal Regulations (CFR), §300.305(e)(1).~~

[(e) .64 4290.0/MCg42 (d t)6.9 (oC 108 316.08 275Tw 27.c7(r)13.7 (a.3 d[(.64 ((-2.3.14 ( t)6.9.c7(r)130 0 9.96. (r)1.7 (no)12b)5

~~[(f) — A student receiving special education services who entered Grade 9 before the 2014-2015 school year may graduate and be awarded a regular high school diploma if the student meets one of the following conditions.]~~

~~[(1) — The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-117, 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation (under the recommended or distinguished achievement high school programs in Chapter 74, Subchapter F, of this title (relating to Graduation Requirements, Beginning with School Year 2007-2008) or Chapter 74, Subchapter G, of this title (relating to Graduation Requirements, Beginning with School Year 2012-2013)), as applicable, including~~

