

## Q&A: Expanded Core Curriculum Instruction and Orientation and Mobility Evaluations

### Texas Updates Resulting From SB 39 and HB 590

The 83rd session of the Texas Legislature passed two bills relevant to students with visual impairments, SB 39 and HB 590, which made changes in Chapter §30.002 of the Texas Education Code. This document is intended to provide guidance related to those changes. The legal references for this document are quoted in parts in the reference section at the end. You can find the entire revised TEC §30.002 online at

<http://www.statutes.legis.state.tx.us/SOTWDocs/ED/htm/ED.30.htm>.

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## ACRONYMS:

CFR	Code of Federal Regulations
COMS	Certified Orientation and Mobility Specialist
DARS-DBS	Department of Assistive and Rehabilitative Services - Division of Blind Services
ECC	Expanded Core Curriculum
O&M	Orientation and Mobility (instruction)
PLAAFP	Present Level of Academic And Functional Performance
SB	Senate Bill
HB	House Bill
TAC	Texas Administrative Code (TEA Commissioner's Rules)
TEA	Texas Education Agency
TEC	Texas Education Code
TVI	Teacher of Students with Visual Impairments
VI	Visual Impairment (can include blindness and students with additional disabilities)

## GENERAL

### 1. What are the timelines for implementing the new requirements of TEC §30.002 Education for Children with Visual Impairments (per SB 39, the 'ECC bill' and HB 590, the "O&M bill")?

*The language that clarified the areas of the expanded core curriculum (amending TEC §30.002, Section A 2.AA Subsection (e)) became law beginning with the 2013-2014 school year. The legislation clarified existing rules; these requirements are not new.*

*The new language in TEC §30.002, requiring O&M evaluations for initial eligibility and participation of the COMS in reevaluation, included a statement that the law must be fully implemented by the beginning of the 2014-2015 school year.*

See Reference 2 (Page 18).

## **2. With the new legislation, what should the full and individual initial evaluation consist of?**

*The purpose of a full and individual initial evaluation is twofold: to determine whether the child is a child with a disability and, if so, to determine the content of the child's IEP.*

*[34 CFR §300.305(a)] [20 U.S.C. 1414(c) (1)-(4)]*

*So, in the case of an initial evaluation, the team must determine first, whether the child meets eligibility as a child with a visual impairment. Then, whether by reason of that visual impairment, the child will need special education and related services.*

*TEA Commissioner Rules TAC §89.1040(c) (12) now identify four specific evaluations that must occur for initial evaluation of eligibility as a student with a visual impairment:*

- *Eye Doctor Exam*
- *Functional Vision Evaluation*
- *Learning Media Assessment*
- *O&M evaluation (this is the new language)*

*See Reference 1 (page 17).*

## **3. If the O&M, FVE and LMA evaluations have been completed and results indicate that this child does not meet eligibility as a child with a visual impairment that will adversely affect their education, do we continue to address the ECC?**

*All three of the evaluations conducted by VI professionals will address strengths and needs in applicable areas of the expanded core curriculum (such as sensory efficiency as part of the FVE, social skills and independent living skills as part of the O&M evaluation, etc.). However, the requirement for instruction in an expanded core curriculum is to be considered only for a student who has been determined to have a visual impairment.*

*If the ARD committee determines that the child does not meet eligibility criteria as a child with a visual impairment, then the team does not need to consider an expanded core curriculum.*

#### **4. With the new laws, what should a full and individual re-evaluation consist of?**

*A “child with a disability means a child evaluated in accordance with §§300.304 through 300.311 as having [one of the disabilities listed above] and who, by reason thereof, needs special education and related services.” [IDEA Part B 300.8]*

*Thus, a student must not only have a visual impairment, but also as a result of that disability, need specially designed instruction.*

*The ARD committee should determine what evaluations are needed to appropriately determine continued eligibility as a student with a visual impairment (see Questions #2 & 3 above) and then the student’s PLAAFP.*

*If a student continues to meet the criteria as a student with visual impairment, then the district should have a systematic process to ensure that all areas listed in TEC §30.002 have been considered, including the areas of the ECC. A COMS needs to be a member of the committee that determines what evaluations are needed.*

#### **5. How do you document need for instruction in areas of the ECC?**

*The district does need to develop a way to annually prioritize needs and strengths (the PLAAFP) for the IEP, and ongoing progress monitoring of a student with visual impairment in areas in the ECC.*

*The Education Code does not mandate any special record-keeping system. Progress in the ECC can be documented on the VI Supplement. Progress monitoring and teacher checklists that help shape IEP programming decisions should be available to the team as they reconvene each year. Some districts will put this in the student's district folder while others will have another designated format and procedure for storing this information.*

## **6. Do we need consent to identify strengths and needs in areas of the ECC?**

*You do need consent to do evaluations required for eligibility and/or reevaluations. Those are the 4 legally required evaluations for eligibility as a student with visual impairment.*

*However, ongoing progress monitoring and using checklists to develop instructional strategies in an expanded core curriculum does not require consent.*

*IDEA revisions 2004 specifically clarified this: The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.*

*[34 CFR §300.302] [20 U.S.C. 1414(a) (1) (E)]*

## **7. We have never tracked the need for and instruction in the ECC. It feels overwhelming. How do we start?**

*The ECC is now more clearly defined in law. The most important caveat is to get started and make sure to get parent, team and student input!*

## **8. Must or may the TVI and COMS do the required evaluations together?**

*TEC §30.002 requires that the O&M evaluation is performed by a COMS. Commissioner's Rules state that the Functional Vision Evaluation can be conducted by either a COMS or by a TVI. The Learning Media Assessment must be conducted by a TVI.*

*It is beneficial and definitely permissible for professionals to collaborate and coordinate their evaluations, as long as the specific required components are conducted, written, and signed by the required professional.*

## **9. My student has so many needs; we couldn't possibly meet them all in one year. How do I set priorities?**

*This is a team process - the TVI and COMS bring the results of the assessments and progress monitoring to the team and discuss*

*which instructional needs are of highest priority for the student that year, including family priorities. An IEP is developed for priority annual goals and objectives. In many cases, it is not reasonable to address all areas of the ECC at one time. Priority ECC areas may vary from year to year for a particular student based on identified needs and are ultimately determined by the ARD committee.*

**10. Can you collaborate with other agencies, other school personnel and/or family members to provide instruction in areas of the ECC?**

*See Section 5 of the TEC §30.002. It clearly indicates that we are supposed to work together. Other qualified agencies include DARS-DBS, for example. The district must note in the IEP how they will document student progress when non-ISD staff addresses an identified IEP goal. Enrichment programs can be used to supplement the IEP without documenting the objectives in a goal.*

**11. Who can address strengths and needs for instruction in ECC areas?**

*The team, typically led by the TVI, should develop a plan for determining the student's present levels of academic achievement and functional performance (PLAAFP). The TVI and COMS may have specific input into needed adaptations, modifications and appropriate materials due to their knowledge of the impact of that student's visual impairment. The COMS must conduct the O&M evaluation. The TVI should be primarily responsible for assessing strengths and needs in braille, Nemeth, and abacus.*

*Collaborative efforts addressing the ECC by the TVI, COMS, parents and other team members is an effective model for many ECC areas (e.g., social skills, independent living skills, recreation and leisure, self-determination, etc.).*

**12. What happens if the TVI and the COMS disagree on whether a child is eligible as a student with a visual impairment?**

*The decisions regarding eligibility are made by the ARD Committee, not just one or two members, and are based on the outcomes of all of the evaluations. Evaluation for special education*

*is to determine the need for systematic, specially designed instruction needed as a result of the impact of a disability "to meet their unique needs and prepare them for further education, employment, and independent living." [CFR §300.01] and is not limited to classroom or academic areas. TAC §89.1405 specifies that an O&M evaluation must address student performance in the home, school and community and in settings unfamiliar to the student. These settings may provide different data than that more typically provided by the FVE and LMA evaluation tools.*

*TEC §30.002 states:*

(c-1) To implement Subsection (c)(1) and to determine a child's eligibility for a school district's special education program on the basis of a visual impairment, the full individual and initial evaluation of the student required by Section §29.004 must, in accordance with Commissioner rule:

(1) include an orientation and mobility evaluation conducted:

(A) by a person who is appropriately certified as an orientation and mobility specialist, as determined under commissioner rule; and

(B) in a variety of lighting conditions and in a variety of settings, including in the student's home, school, and community and in settings unfamiliar to the student;

*If an O&M evaluation recommends that a student needs specially designed instruction in the area of orientation and mobility as a result of their visual impairment, and the ARD committee agrees, then the student should be qualified for special education, and the TVI could collaborate with the O&M in the provision of needed special education.*

*In IDEA Section 300.8, it is stated:*

(ii) If, consistent with IDEA Sec. 300.39(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

*Also, in Texas law TEC §30.002(c) (4) (B) (ii), Texas state statute now lists O&M as part of required instructional areas for students with visual impairment. Therefore, O&M can be considered an instructional service.*



**13. What if identified needs in the areas of the expanded core curriculum for a student qualified as having a visual impairment are not related to the visual impairment (i.e., due to a specific learning disability, intellectual disability or physical impairment)?**

*There is a space on most checklists for noting that there are other influences on learning and development and that a specific area of need is not related to the student's visual impairment. Determining the most appropriate response to an educational need is part of the ARD committee discussions.*

## **STUDENTS WITH ADDITIONAL DISABILITIES**

**14. Do the new laws and the TEC §30.002 apply to children who are suspected of being deaf-blind?**

*Yes. Under Texas Administrative Code, TAC §89.1040(c)(2), a child with suspected deaf-blindness will be evaluated for eligibility as visually impaired AND auditory impaired, implying that the evaluation will include all of the components for both, including orientation and mobility.*

*Note that even if the child does not meet the eligibility requirements for visual impairment and auditory impairment, there are additional criteria to be considered in making the eligibility determination for deaf-blindness.*

*See Reference 3 below (page 22).*

**15. Does the revisions to TEC §30.002 apply to students who are visually impaired and intellectually disabled or have additional disabilities?**

*This law refers to **all** students with visual impairments. Teachers need to become familiar with a variety of evaluation tools in order to gather valid information on the wide range of students served.*

## **INFANTS AND TODDLERS (BIRTH THROUGH 2 YEARS OF AGE) AND ECI**

### **16. Does TEC §30.002 apply to the infants and toddlers, from birth through 2, who are typically served by ECI?**

*Yes. School age for the population with visual and/or auditory impairments starts at birth. In Texas, everything that applies to children with visual impairment in federal, state, and SBOE, and TEA Commissioner special education rules and regulations, applies to the birth through 2 populations.*

- In Texas, children (birth through 2) with VI are specifically given the rights to FAPE (and to Part C).*
- TEA has the responsibility for this whole age range, but because of the overlap with ECI, TEA developed an MOU to ensure that infants and toddlers received all of the benefits of both Special Education and ECI, and have access to TVI and O&M services.*

*See References 4 and 5(pages 22 and 24).*

### **17. If an infant is being initially evaluated for ECI services as having a visual impairment, should an O&M evaluation be part of the evaluation?**

*Yes. The same rules in TEC §30.002 apply to determining eligibility for infants as for older students, so an O&M evaluation done by an appropriately certified professional is required.*

## **ORIENTATION AND MOBILITY QUESTIONS**

### **18. What is the role of the COMS in evaluation and instruction in all the other areas of the ECC?**

*The law states that a COMS must be part of the multidisciplinary team in evaluating data for eligibility and shall participate with that team in determining the scope of any reevaluation of a student with visual impairment.*

*Each district will determine procedures for ensuring that all areas of the ECC have been evaluated as well as how to meet identified needs for specialized instruction.*

*Districts have many options, including:*

- *The COMS can evaluate the student and share that report with the REED committee in person or via electronic means*
- *The COMS can participate in the REED committee deliberation and base input on the information provided by other committee members or prior knowledge of the student*

*As VI professionals, the COMS and the TVI are uniquely trained and qualified to ensure that a student's needs have been effectively evaluated and that the necessary instructional arrangements are appropriately addressed.*

*A comprehensive O&M evaluation addresses many areas of the expanded core curriculum. The COMS should contribute results of those evaluations and collaborate with the team during the evaluation process.*

*The COMS' role in providing instruction in relevant areas of the ECC (e.g., independent living skills, social interaction skills, self-determination, sensory efficiency, etc.) will be specified in the IEP.*

## **19. Does an O&M evaluation include areas of the ECC?**

*Most O&M evaluation resources include multiple areas of the ECC in their templates. There are different perspectives coming from the COMS evaluations.*

## **20. What happens if the TVI and the COMS disagree on whether a child is eligible as a student with a visual impairment?**

*Federal regulations require the ARD committee to carefully consider information from a variety of sources. CFR §300.306(c)*

*Decisions regarding eligibility are made by the ARD Committee, not just one or two members, and are based on consideration of the*

*outcomes of all a variety of assessment tools, evaluations and input.*

## **21. Who can provide orientation and mobility to students in the school systems of Texas?**

*Commissioner's Rule, TAC §89.1131(e) states that "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.*

*IDEA CFR §300.156(b) specifies that*

*(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;*

## **22. What happens if, after an O&M evaluation, the COMS and the TVI disagree about the need for O&M services?**

*The ARD Committee, which includes the TVI and all the other mandated members, would decide, based on the evaluation and other relevant information, if O&M services should be included in the IEP. That is standard procedure for any IEP decision. See #12 above for discussion on O&M as an instructional service.*

*In the case of disagreement, an independent evaluation is always an option.*

**23. If a student has received an O&M evaluation and did not qualify for O&M services, does that student have to be re-evaluated again at each re-evaluation?**

*The new law requires a COMS to participate with the multidisciplinary team that decides what evaluations are needed for each reevaluation. The intent of the law was to ensure that orientation and mobility is considered at every reevaluation.*

*Further clarifications are available in the OSEP Q&A document on Evaluation and Reevaluation, available at <http://idea.ed.gov/>.*

*Districts have varying procedures on how this process occurs. Some options include:*

- *Invite the COMS to every ARD meeting*
- *Include consent for an O&M evaluation at each reevaluation*
- *Request a statement from a COMS on the needs for evaluation prior to convening the REED committee*

*Remember that any team member can ask for a reevaluation more often than every 3 years; that is a minimum.*

**24. Why does the rule still say that the TVI should make a recommendation on the need for O&M evaluation?**

*New language in Education Code requires that the O&M specialist must do an evaluation for initial eligibility, and then be part of the multidisciplinary team to determine if additional evaluation is needed. The existing Commissioner rule will be updated early in the 2014-2015 school year, but until it is, you can write:*

*"A COMS must be part of the multidisciplinary team in evaluating data on which the determination of the child's eligibility is based and be part of the team making decisions on the scope of any reevaluation. Therefore, a recommendation on whether an O&M evaluation is needed will need to take the COMS' input into consideration."*

**25. For a student who has never had an O&M evaluation, when would the evaluation be requested—at the child's annual ARD, at each reevaluation, at a 3-year reevaluation, or another time?**

*The requirement for an O&M evaluation only applies to children being considered for initial eligibility as a student with a visual impairment. When the district is planning the initial evaluation, the O&M evaluation should be scheduled just like all of the other required and/or needed evaluations. This only applies to children being evaluated for the first time after September 1, 2014.*

*Districts are not required to immediately evaluate every student with a visual impairment who is being served as VI but has never had an O&M evaluation. Those children's needs should be re-considered at each reevaluation. The COMS is a required participant on the team that will determine what specific evaluation data are needed when the team considers reevaluation. The law does not say that there must be an O&M evaluation, just that the COMS is a required part of the team that determines if it is needed. A COMS can recommend an O&M evaluation at any time it seems appropriate and does not need to wait until the reevaluation is due to make a recommendation to the ARD committee for an evaluation.*

**26. Is a COMS required to attend every ARD for a student with visual impairment, even if the student is not receiving or has not received an O&M evaluation?**

*The new law has no requirements related to attending the ARD committee meetings. The COMS must perform an evaluation prior to the initial determination of eligibility as a student with a visual impairment and participate as part of a team determining needed evaluations for subsequent reevaluations. Required ARD membership is outlined in TAC Section §89.1050 and this has not been changed.*

*Districts have multiple options, including:*

- *Inviting the COMS to each ARD meeting*

- *Soliciting information and sharing reports electronically or in paper between all team members prior to the ARD meeting*
- *Inviting team members to attend electronically or by phone during an ARD committee meeting*

## **27. Can a child receive O&M services under Section 504?**

*O&M is included in the definition of services that can be provided under 504. Therefore, O&M services can be provided under Section 504 if the ARD committee determines that the student does not qualify for special education under IDEA but does need O&M services as a child with a visual impairment.*

*The orientation and mobility services would be provided using local district funds. The district would proceed according to their established procedures for implementing Section 504. (The criteria for eligibility under Section 504 are much broader than those for IDEA and therefore less restrictive.)*

*The Office of Civil Rights FAQ provides more guidance on Section 504 services:*

*<http://www2.ed.gov/about/offices/list/ocr/504faq.html>*

*An additional relevant OCR resource is “The Civil Rights of Students with Hidden Disabilities under Section 504 of the Rehabilitation Act of 1973.” The document includes low vision as an example of a hidden disability.*

*<http://www2.ed.gov/about/offices/list/ocr/docs/hq5269.html>*

*Alternatively, if an evaluation by a COMS recommends that a student needs specially designed instruction in the area of orientation and mobility as a result of their visual impairment, and the ARD committee agrees, then the student could be qualified for special education, and the TVI would collaborate with the O&M in the provision of needed special education. See #14 above.*

**28. If a child does not qualify for special education under IDEA, or as a student with a visual impairment, would the service then be “Travel Training”?**

*Travel Training and Orientation and Mobility are two different services, although there is some overlap in the content. An Orientation and Mobility Instructor is not trained to do travel training.*

*Orientation and mobility is designed for children with a visual impairment. Orientation and mobility would be provided to a child who is eligible for services as a child with a visual impairment under IDEA 300.34 (7) (i) (ii) (A-D) and/or under Section 504. In Texas, it must be provided by a COMS.*

*Travel training is special education instruction provided “to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to develop an awareness of the environment in which they live; and 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.” CFR §300.39 (b) (4).*



## **REFERENCES:**

### **(1) 19 TAC Chapter 89**

*19 TAC Chapter 89 defines visual impairment eligibility including these rules:*

*(12) Visual impairment.*

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

*(I) a functional vision evaluation by a professional certified in the education of students with visual impairments or a certified orientation and mobility instructor. ....*

*(II) a learning media assessment by a professional certified in the education of students with visual impairments. ....*

*(C) Beginning with the 2014-2015 school year, a full individual and initial evaluation of a student suspected of having a visual impairment must include an orientation and mobility evaluation conducted by a person who is appropriately certified as an orientation and mobility specialist .....*

*(D) Beginning with the 2014-2015 school year, a person who is appropriately certified as an orientation and mobility specialist must participate, as part of a multidisciplinary team, in evaluating data used in making the determination of the student's eligibility as a student with a visual impairment.*

*(E) Beginning with the 2014-2015 school year, the scope of any reevaluation of a student who has been determined, after the full individual and initial evaluation, to be eligible for the district's special education program on the basis of a visual impairment must be determined, in accordance with 34 CFR, §§300.122 and 300.303-300.311, by a multidisciplinary team that includes an appropriately certified orientation and mobility specialist.*

## **(2) Texas Education Code Sec. 30.002.**

### ***EDUCATION FOR CHILDREN WITH VISUAL IMPAIRMENTS.***

(a) The agency shall develop and administer a comprehensive statewide plan for the education of children with visual impairments who are under 21 years of age that will ensure that the children have an opportunity for achievement equal to the opportunities afforded their peers with normal vision.

(b) The agency shall:

(1) develop standards and guidelines for all special education services for children with visual impairments that it is authorized to provide or support under this code;

(2) supervise regional education service centers and other entities in assisting school districts in serving children with visual impairments more effectively;

(3) develop and administer special education services for students with both serious visual and auditory impairments;

(4) evaluate special education services provided for children with visual impairments by school districts and approve or disapprove state funding of those services; and

(5) maintain an effective liaison between special education programs provided for children with visual impairments by school districts and related initiatives of the Department of Assistive and Rehabilitative Services Division for Blind Services, the Department of State Health Services Mental Health and Substance Abuse Division, the Texas School for the Blind and Visually Impaired, and other related programs, agencies, or facilities as appropriate.

(c) The comprehensive statewide plan for the education of children with visual impairments must:

(1) adequately provide for comprehensive diagnosis and evaluation of each school-age child with a serious visual impairment;

(2) include the procedures, format, and content of the individualized education program for each child with a visual impairment;

(3) emphasize providing educational services to children with visual impairments in their home communities whenever possible;

(4) include methods to ensure that children with visual impairments receiving special education services in school districts receive, before being placed in a classroom setting or within a reasonable time after placement:

(A) evaluation of the impairment; and

(B) instruction in an expanded core curriculum, which is required for students with visual impairments to succeed in classroom settings and to derive lasting, practical benefits from the education provided by school districts, including instruction in:

(i) compensatory skills, such as braille and concept development, and other skills needed to access the rest of the curriculum;

(ii) orientation and mobility;

- (iii) social interaction skills;
  - (iv) career planning;
  - (v) assistive technology, including optical devices;
  - (vi) independent living skills;
  - (vii) recreation and leisure enjoyment;
  - (viii) self-determination; and
  - (ix) sensory efficiency;
- (A) specialty staff and resources provided by the district;
  - (B) contractual arrangements with other qualified public or private agencies;
  - (C) supportive assistance from regional education service centers or adjacent school districts;
  - (D) short-term or long-term services through the Texas School for the Blind and Visually Impaired or related facilities or programs; or
  - (E) other instructional and service arrangements approved by the agency;
- (6) include a statewide admission, review, and dismissal process;
  - (7) provide for effective interaction between the visually impaired child's classroom setting and the child's home environment, including providing for parental training and counseling either by school district staff or by representatives of other organizations directly involved in the development and implementation of the individualized education program for the child;
  - (8) require the continuing education and professional development of school district staff providing special education services to children with visual impairments;
  - (9) provide for adequate monitoring and precise evaluation of special education services provided to children with visual impairments through school districts; and
  - (10) require that school districts providing special education services to children with visual impairments develop procedures for assuring that staff assigned to work with the children have prompt and effective access directly to resources available through:
    - (A) cooperating agencies in the area;
    - (B) the Texas School for the Blind and Visually Impaired;
    - (C) the Central Media Depository for specialized instructional materials and aids made specifically for use by students with visual impairments;
    - (D) sheltered workshops participating in the state program of purchases of blind-made goods and services; and
    - (E) related sources.
- (c-1) To implement Subsection (c)(1) and to determine a child's eligibility for a school district's special education program on the basis of a visual impairment, the full individual and initial evaluation of the student required by Section [29.004](#) must, in accordance with commissioner rule:
- (1) include an orientation and mobility evaluation conducted:
    - (A) by a person who is appropriately certified as an orientation and mobility specialist, as determined under commissioner rule; and

(B) in a variety of lighting conditions and in a variety of settings, including in the student's home, school, and community and in settings unfamiliar to the student; and

(2) provide for a person who is appropriately certified as an orientation and mobility specialist to participate, as part of a multidisciplinary team, in evaluating data on which the determination of the child's eligibility is based.

(c-2) The scope of any reevaluation by a school district of a student who has been determined, after the full individual and initial evaluation, to be eligible for the district's special education program on the basis of a visual impairment shall be determined, in accordance with 34 C.F.R. Sections 300.122 and 300.303 through 300.311, by a multidisciplinary team that includes, as provided by commissioner rule, a person described by Subsection (c-1) (1) (A).

(d) In developing, administering, and coordinating the statewide plan, the agency shall encourage the use of all pertinent resources, whether those resources exist in special education programs or in closely related programs operated by other public or private agencies, through encouraging the development of shared services arrangement working relationships and by assisting in the development of contractual arrangements between school districts and other organizations. The agency shall discourage interagency competition, overlap, and duplication in the development of specialized resources and the delivery of services.

(e) Each eligible blind or visually impaired student is entitled to receive educational programs according to an individualized education program that:

- (1) is developed in accordance with federal and state requirements for providing special education services;
- (2) is developed by a committee composed as required by federal law;
- (3) reflects that the student has been provided a detailed explanation of the various service resources available to the student in the community and throughout the state;
- (4) provides a detailed description of the arrangements made to provide the student with the evaluation and instruction required under Subsection (c) (4); and

(5) sets forth the plans and arrangements made for contacts with and continuing services to the student beyond regular school hours to ensure the student learns the skills and receives the instruction required under Subsection (c)(4)(B).

(f) In the development of the individualized education program for a functionally blind student, proficiency in braille reading and writing is presumed to be essential for the student's satisfactory educational progress. Each functionally blind student is entitled to braille reading and writing instruction that is sufficient to enable the student to communicate with the same level of proficiency as other students of comparable ability who are at the same grade level. Braille instruction may be used in combination with other special education services appropriate to the student's educational needs. The assessment of each

functionally blind student for the purpose of developing the student's individualized education program must include documentation of the student's strengths and weaknesses in braille skills. Each person assisting in the development of a functionally blind student's individualized education program shall receive information describing the benefits of braille instruction. Each functionally blind student's individualized education program must specify the appropriate learning medium based on the assessment report and ensure that instruction in braille will be provided by a teacher certified to teach students with visual impairments. For purposes of this subsection, the agency shall determine the criteria for a student to be classified as functionally blind.

(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.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 505 (S.B. 39), Sec. 1, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 637 (H.B. 590), Sec. 1, eff. September 1, 2013.

### **(3) 19 Texas Administrative Code § 89.1040. Eligibility Criteria related to Deaf-Blindness.**

*(2) Deaf-blindness. A student with deaf-blindness is one who has been determined to meet the criteria for deaf-blindness as stated in 34 CFR, §300.8(c) (2). In meeting the criteria stated in 34 CFR, §300.8(c) (2), a student with deaf-blindness is one who, based on the evaluations specified in subsections (c) (3) and (c) (12) of this section:*

*(A) meets the eligibility criteria for auditory impairment specified in subsection (c) (3) of this section and visual impairment specified in subsection (c) (12) of this section;*

*(B) meets the eligibility criteria for a student with a visual impairment and has a suspected hearing loss that cannot be demonstrated conclusively, but a speech/language therapist, a certified speech and language therapist, or a licensed speech language pathologist indicates there is no speech at an age when speech would normally be expected;*

*(C) has documented hearing and visual losses that, if considered individually, may not meet the requirements for auditory impairment or visual impairment, but the combination of such losses adversely affects the student's educational performance; or*

*(D) has a documented medical diagnosis of a progressive medical condition that will result in concomitant hearing and visual losses that, without special education intervention, will adversely affect the student's educational performance.*

### **(4) Eligibility Rules related to Services to Infants**

*TAC §89.1035. Age Ranges for Student Eligibility.*

*a. Pursuant to state and federal law, services provided in accordance with this subchapter shall be available to all eligible students ages 3-21. Services will be made available to eligible students on their third birthday. Graduation with a regular high school diploma pursuant to §89.1070 (b) (1)-(2) of this title (relating to Graduation Requirements) terminates a student's eligibility to receive services in accordance with this subchapter. An eligible student receiving special education services who is 21 years of age on September 1 of a school year shall be eligible for*

*services through the end of that school year or until graduation with a regular high school diploma pursuant to §89.1070 (b)(1)-(2) of this title, whichever comes first.*

*b. in accordance with the Texas Education Code (TEC), §§29.003, §30.002(a), and §30.081, a free, appropriate, public education shall be available from birth to students with visual or auditory impairments.*

*TEC Sec. §30.002*

*a. The agency shall develop and administer a comprehensive statewide plan for the education of children with visual impairments who are under 21 years of age that will ensure that the children have an opportunity for achievement equal to the opportunities afforded their peers with normal vision.”*

*TEC Sec. §29.003. ELIGIBILITY CRITERIA.*

*a. The agency shall develop specific eligibility criteria based on the general classifications established by this section with reference to contemporary diagnostic or evaluative terminologies and techniques. Eligible students with disabilities shall enjoy the right to a free appropriate public education, which may include instruction in the regular classroom, instruction through special teaching, or instruction through contracts approved under this subchapter. Instruction shall be supplemented by the provision of related services when appropriate.*

*b. A student is eligible to participate in a school district's special education program if the student:*

- 1. is not more than 21 years of age and has a visual or auditory impairment that prevents the student from being adequately or safely educated in public school without the provision of special services; or...*

## **(5) Early Transition Memorandum of Understanding excerpt**

Full text available for download at:

<http://www.tea.state.tx.us/index2.aspx?id=2147494979>

### Memorandum of Understanding

The Department of Assistive and Rehabilitative Services and the Texas Education Agency

#### **I. PURPOSES**

*The purposes of this Memorandum of Understanding (MOU) are to:*

- A. Define the roles and responsibilities of the Texas Department of Assistive and Rehabilitative Services (DARS) and the Texas Education Agency (TEA) to ensure a smooth transition for children and their families receiving early intervention services under Part C of the Individuals with Disabilities Education Act (IDEA) to preschool special education services under Part B of IDEA; and*
- B. Establish a statewide system of services to identify and serve children, birth to 36 months, with auditory impairments (AI) and visual impairments (VI) who are eligible to receive services under Part C of the IDEA and Texas Education Code (TEC), Chapters 29 and 30.*

#### **II. PROGRAM OVERVIEWS**

*Early Childhood Intervention (ECI):*

*DARS is the designated lead agency for implementation and maintenance of Part C of IDEA, known in Texas as the Early Childhood Intervention (ECI) program. The ECI program requires a statewide, coordinated system that provides early intervention services to children less than three years of age with developmental delays or disabilities and their families. DARS contracts with local agencies and organizations, such as community centers, school districts, regional Education Service Centers (ESCs), and nonprofit organizations to provide services to children and families.*

*Preschool Programs for Children with Disabilities (PPCD):*

*TEA is the designated lead agency for implementation and maintenance of Part B of IDEA, which requires that a free appropriate public education be available to all children with disabilities between the ages of three and 21. In Texas, the public school program for children with disabilities who are ages three through five is known as Preschool Programs for Children with Disabilities (PPCD). Local Educational Agencies (LEAs) provide PPCD services to eligible children with disabilities.*

*In Texas, children with an AI or a VI are entitled to a free appropriate public education from birth. Therefore, services for a child with an AI or a VI from birth*



to 36 months must be coordinated between the local ECI program and the LEA for the area where the child resides. Under 19 Texas Administrative Code (TAC) §89.1050, each school district shall establish an admission, review, and dismissal (ARD) committee for each eligible student with a disability and for each student for whom an initial evaluation for special education services is conducted. The rule further provides that the ARD committee shall be the individualized education program (IEP) team defined in federal law and regulations. Accordingly, IEP team meetings, including initial meetings, are referred to as ARD committee meetings in Texas.

### **III. CHILD FIND**

A. DARS ensures that it has policies and procedures in effect to establish requirements that:

1. ECI programs identify, locate, and evaluate all infants and toddlers, birth through 36 months of age, who have or are suspected of having developmental delays, an AI, or a VI;
2. An effective method is developed and implemented to identify children who are in need of early intervention services;
3. The child find system is coordinated with all other major efforts to locate and identify children by other State agencies responsible for administering the various education, health, and social service programs;
4. ECI programs take steps to ensure that there will not be unnecessary duplication of effort by the various agencies involved in the State's child find system;
5. With parental consent, ECI programs provide children from birth to 36 months of age with:
  - a. For children suspected of having a VI, an evaluation by a licensed ophthalmologist or optometrist; and
  - b. For children suspected of having an AI, an audiological evaluation by a licensed audiologist. If the audiological assessment indicates the child has an AI the contractor must refer the child within five working days to
    - i. An otologist, or a licensed medical doctor with documentation that an otologist is not reasonably available, for an otological examination; and
    - ii. The LEA for a communication assessment.
6. Upon completion of assessments listed in 111.A.5.a above, and with parental consent, children with results that indicate vision loss are referred to an LEA for a Functional Vision Evaluation (FVE), a Learning Media Assessment (LMA), and an Orientation and Mobility Evaluation (OME);
7. For children who are determined eligible for services by subsequent evaluations described in Sections 111.A.5.b and 111.A.6 above, ECI programs invite a teacher certified to teach children who are visually impaired or a teacher certified to teach children who are auditorially impaired, as appropriate, to the initial and annual Individualized Family Service Plan (IFSP) meetings, and to other IFSP meetings when issues related to or affected by the AI or VI will be

addressed; and

8. ECI programs coordinate service delivery with LEAs and other service agencies for services listed in the IFSP.

B. TEA ensures that it has policies and procedures in effect to ensure that:

1. All children with disabilities residing in the State, including children with disabilities who are homeless children or wards of the State, and children with disabilities attending private schools, regardless of the severity of the disability, and who are in need of special education and related services, are identified, located, and evaluated;
2. LEAs locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the district served by the LEA;
3. LEAs, as soon as possible, but in no case more than seven days, provide referrals to the local ECI program for all children under three years of age discovered through the child find process;
4. LEAs provide a FVE, a LMA, and an OME for all children birth through 36 months of age who are referred by an ECI program related to Section 111.A.6 above; and
5. LEAs provide a communication assessment for all children birth through 36 months of age who are referred by an ECI program related to Section 111.A.5.b.ii above.

#### **IV. TRANSITION NOTIFICATION**

A. DARS ensures that it has policies and procedures in effect to establish requirements that:

1. ECI programs determine if two year olds receiving services under Part C of IDEA are potentially eligible for preschool special education services under Part B of IDEA;
2. Before notifying the appropriate LEA that a child is potentially eligible for Part B services, the ECI program provides written notification to the child's parent advising the parent of:
  - a. The information that will be disclosed, including the limited personally identifiable information (child's name, child's date of birth, parent's name, address, and telephone number), the service coordinator's name, and the child's home language; and
  - b. The right to opt out of the disclosure by submitting a written request to Opt Out of the Notification to the ECI program according to 34 Code of Federal Regulations (CFR) §303.209 (1)(b) and (2) and the timelines specified in the 40 TAC, Chapter 108 before the notification is scheduled to be sent;
3. For a child whose parent has not opted out of the disclosure within the prescribed timeline, the ECI program notifies the LEA at least 90 days before the child's third birthday that the child is potentially eligible for Part B services;
4. When an ECI program provides notification of a potentially eligible child less

*than 90 days before the child's third birthday, the ECI program provides, at the same time as the notification, a written explanation to the LEA stating the reason for the delay;*

*5. If an ECI program determines that a child is eligible for Part C services fewer than 90 days and more than 45 days before the child's third birthday, the ECI program determines as soon as possible whether the child is potentially eligible for Part B services. If the child is determined to be potentially eligible for Part B services, the ECI program provides notification to the LEA as soon as possible, unless the parent opts out of the disclosure in writing;*

*6. If a child is referred to an ECI program fewer than 45 days before the child's third birthday and the child may be potentially eligible for Part B services, the ECI program, with parental consent, refers the child to the LEA for a Part B eligibility determination. The ECI program is not required to determine the child's eligibility for Part C services in this situation; and*

*7. TEA is notified of children potentially eligible for Part B services at least 90 days before each child's third birthday, or as soon as possible for children determined eligible for Part C services between 90 and 45 days before the child's third birthday. With parental consent, referral to TEA is provided for all children referred to an ECI program fewer than 45 days before each child's third birthday. Local ECI contractors will provide these same notifications to the appropriate LEAs.*

*8. TEA ensures that it has policies and procedures in effect to ensure that:*

*1. LEAs understand that receiving notification of a child who is potentially eligible for Part B services constitutes a referral to the Part B system and that steps must be taken to initiate the evaluation process to determine whether the child is eligible for Part B services;*

*2. LEAs coordinate efforts with ECI programs to support parent involvement in the transition planning process; and*

*3. Personally identifiable data, information, and records collected or maintained are protected and remain confidential pursuant to all state and federal regulations.*

.....

## (6) Briefing Book on Public Education Legislation - Texas Education Agency 83rd Texas Legislative Session July 2013

TEA legislative briefing book provides information about new education laws.

[tea.state.tx.us/legislative-re...](http://tea.state.tx.us/legislative-re...)

### **SB 39**

Amends Section 30.002, Education Code **Summary:** The bill adds language that would require the evaluation of and subsequent instruction in Braille, concept development, social interaction skills, career planning, assistive technology, including optical devices, independent living skills, recreation and leisure enjoyment, self-determination, and sensory efficiency for students who are blind or visually impaired. These instructional areas are commonly referred to as the Expanded Core Curriculum.

**Change from current law:** Updates agency references and terminology related to the ECC, and codifies the requirement to provide evaluation and instruction in the elements of the ECC to students who are blind or visually impaired.

**Effective Date:** June 14, 2013

**Action required for 2013-14 School Year:** Districts must evaluate a student's proficiency in the elements of the ECC and provide instruction as required by the evaluation.

**Outstanding Issues:** Whether Commissioner Rule will require amendment.

**For further information, please contact:** Rulemaking Authority: None Federal and State Education Policy, (512)463-9414

#### **Does this expressly apply to charters?**

The bill requires school districts providing services to students with visual impairments to evaluate and provide necessary instruction in the ECC. Charter schools are not mentioned but it would appear (because the bill language links to Chapter 29 of the TEC and federal IDEA regulations) that if a charter school has enrolled students with

visual impairments, they would need to provide the required evaluation and related instruction.

**Does this bill contain a new reporting requirement for TEA/school districts? No**

**Does this bill require the agency or ISD to post information to their website? No**

**Outstanding Issues:** None

## **HB 590**

Adds Subsections 30.002 (c-1) and (c-2),

**Summary:** This bill requires an orientation and mobility (O&M) evaluation performed by a certified orientation and mobility specialist (COMS) as part of special education eligibility considerations for children with a suspected or diagnosed visual impairment. Subsection (c-2) requires that COMS be part of the multidisciplinary team that performs re-evaluations for purposes of continuing eligibility for special education for students with a vision impairment.

**Change from current law:** Adds O&M evaluation to currently require ophthalmological or optometric evaluation, functional vision, and learning media assessments currently required for special education eligibility for students with visual impairments.

**Effective Date:** June 14, 2013

**Action required for 2013-14 School Year:** Commissioner's rules need to be adopted by January 1, 2014 to implement the new subsections by the beginning of the 2014-2015 school year.

**Outstanding Issues:** None

**For further information, please contact: Rulemaking Authority:** Commissioner  
Federal and State Education Policy,  
(512)463-9414

**Does this expressly apply to charters?**

No, but charters providing services to students with visual impairments will need to ensure that the special education rules are followed (because this bill requires the Agency to amend Commissioner's Rules Chapter 89, Subchapter AA, related to eligibility for special education).

**Does this bill contain a new reporting requirement for TEA/school districts?**

No

**Does this bill require the agency or ISD to post information to their website? No**