

Text of Adopted Amendment to 19 TAC

Chapter 102. Educational Programs

Subchapter MM. Commissioner's Rules Concerning Supplemental Special Education Services Program

§102.1601. Supplemental Special Education Services and Instructional Materials Program for Certain Public School Students Receiving Special Education Services.

- (a) The Texas Education Agency (TEA) will administer the Supplemental Special Education Services Program described in Texas Education Code (TEC), Chapter 29, Subchapter A-1, under the name Parent-Directed Special Education Services (PDSSES). Any reference to the Supplemental Special Education Services Program, supplemental special education services, supplemental special education instructional materials, or SSES in state law and TEA materials is to be considered synonymous with the PDSSES program.
- (b) ~~(a)~~ Definitions. For the purposes of this section, the following definitions apply.
- (1) Eligible student--A student who meets all program eligibility criteria under TEC [Texas Education Code (TEC)], §29.044, and this section.
  - (2) Management system--The online system provided by the marketplace vendor to allow for account creation, management of funds, and access to the marketplace.
  - (3) Marketplace--The virtual platform where parents and guardians with [Supplemental Special Education Services (SSES)] program funds may purchase goods and services.
  - (4) Marketplace vendor--The vendor chosen by TEA [the Texas Education Agency (TEA)] to create an online marketplace for the use of [SSES] program funds.
  - (5) Parent-directed [Supplemental] special education instructional materials (materials) --This term has the meaning defined in TEC, §29.041, and specifically excludes materials that are provided as compensatory services or as a means of providing a student with a free appropriate public education.
  - (6) Parent-directed [Supplemental] special education services (services) --This term has the meaning defined in TEC, §29.041, and specifically excludes services that are provided as compensatory services or as a means of providing a student with a free appropriate public education or an independent educational evaluation .
  - (7) Program--This term has the meaning in TEC, Chapter 29, Subchapter A-1, as well as the PDSSES program.
- (c) ~~(b)~~ Eligibility criteria. All students currently enrolled in a Texas public school district or open-enrollment charter school who are served under an individualized education program (IEP) in a special education program [during the 2021-2022 or 2022-2023 school year] , including, but not limited to, students in early childhood special education, prekindergarten, Kindergarten-Grade 12, and 18-and-over transition programs, are eligible for the [SSES] program with the following exclusions:
- (1) students who do not reside in Texas or move out of the state, not including military-connected students entitled to enroll or remain enrolled while outside the state; or
  - (2) students who previously received a program grant, beginning with the program's launch in the 2020-2021 school year [an SSES grant] .
- (d) ~~(c)~~ Awards.
- (1) Parents and guardians of eligible students will [may] receive grants [as long as funds are available] of [up to] \$1,500 as long as funds are available [in state funds and may receive additional federal funds, depending on eligibility and availability,] for use in the purchasing of [supplemental special education instructional] materials and [supplemental special education] services through the curated marketplace of educational goods and services. Parents and guardians may receive only

one grant for each eligible student. A student ~~[Students]~~ enrolled in a school district or open-enrollment charter school that is eligible for a compensatory education allotment under TEC, §48.104, will be prioritized to receive a grant award.

- (2) TEA will use Public Education Information Management System (PEIMS) codes submitted by school districts and open-enrollment charter schools by each school year's TEA-established fall data submission deadline to verify eligibility in order to award accounts for the ~~[SSES]~~ program.

~~[(3) TEA will prioritize the awarding of applicant accounts based on applicants qualifying for the National School Lunch Program and available funds.]~~

~~(e) [(e)]~~ Establishment of the marketplace.

- (1) In accordance with TEC, §29.042(d), TEA shall award an education service center (ESC) with an operational and school district support grant, which may include, but is not limited to, the following operational requirements:
  - (A) writing and administering a contract for a vendor for the program ~~[SSES]~~ marketplace that curates the content in its marketplace for educational relevancy. In accordance with the Family Educational Rights and Privacy Act, the contract must require the vendor for the marketplace to protect and keep confidential students' personally identifiable information, which may not be sold or monetized;
  - (B) providing technical assistance to parents and guardians throughout the ~~[SSES]~~ program process;
  - (C) serving as the main point of contact for the selected marketplace vendor to ensure eligible student accounts are appropriately spent down;
  - (D) approving or denying all purchases from the program ~~[SSES]~~ marketplace, including communication with parents and guardians about purchase order requests; and
  - ~~[(E) increasing the number of qualified service providers in the marketplace; and]~~
  - ~~(E) [(E)]~~ approving or denying all potential service providers.
- (2) Providers of ~~[supplemental special education instructional]~~ materials and services may apply to be listed in the marketplace. To become an approved marketplace service provider, an applicant must sign a service provider agreement and comply with licensing, safety, and employee background checks.

(A) Organization service providers are required to provide their Texas Tax ID for TEA to verify the validity of the organization.

(B) Individual service providers are required to provide proof of credentials and licensing in accordance with the individual service provider categories established by TEA.

- (3) TEA shall provide a process for the application and approval of vendors to the marketplace.
- (4) TEA and the marketplace vendor shall provide a curated list of vendors through which parents and guardians can purchase educationally relevant ~~[supplemental special education instructional]~~ materials. The established marketplace vendor shall be responsible for ensuring the vendors comply with ~~[SSES]~~ program parameters as they relate to the marketplace and be responsible for all communications with marketplace vendors.

~~(f) [(e)]~~ Application process for grant on behalf of a student.

- (1) TEA is responsible for the application process and the determination of which applicants are approved for ~~[SSES]~~ program grants.
- (2) Parents and guardians who would like to apply on behalf of their eligible students must complete the online application.
- (3) TEA will establish an annual application window. If applications are submitted during the window for students who would not show as eligible under the fall PEIMS data collection used by TEA

under subsection (d)(2) of this section, a parent must submit evidence of eligibility when submitting the application.

(4) ~~(3)~~ Upon approval of the application:

- (A) TEA shall send contact information for parents and guardians of eligible students in a secure manner to the online marketplace vendor for account creation and distribution;
- (B) parents and guardians of eligible students will receive an email to the same email address provided during application from the marketplace vendor with information on how to access their accounts; and
- (C) parents and guardians will be awarded an account of ~~[up to]~~ \$1,500 ~~[in state funds and may be awarded in the account additional federal funds]~~, depending on ~~[eligibility and availability of funds]~~, per eligible student to be used to purchase ~~[supplemental special education]~~ services and ~~[supplemental special education instructional]~~ materials.

(5) ~~(4)~~ Parents and guardians of students who are deemed not eligible or who are determined to have violated account use restrictions under subsection (i) ~~(h)~~ of this section will receive notification from TEA and be provided an opportunity to appeal the denial or account use determination. TEA shall exercise its discretion to determine the validity of any such appeal.

~~(6)~~ A parent or guardian of a student who is deemed not eligible because the student cannot be verified through the PEIMS process described under subsection (d)(2) of this section or because the parent or guardian did not submit the necessary documentation during the designated application window for a student who became eligible after the timeline described in subsection (d)(2) of this section but before the end of the application window must wait until the following school year's application window to reapply.

(7) ~~(5)~~ If necessary, eligible students will be placed on a waitlist and parents and guardians will be notified. ~~When~~ ~~[Should]~~ additional funds become available, priority will be given in the order established by the waitlist and in accordance with subsection (d) ~~(e)~~ of this section.

(8) ~~(6)~~ TEA shall maintain confidentiality of students' personally identifiable information in accordance with the Family Educational Rights and Privacy Act and, to the extent applicable, the Health Insurance Portability and Accountability Act.

(g) ~~(f)~~ Approval of application; assignment of account.

- (1) TEA shall set aside funds for a pre-determined number of accounts of ~~[up to]~~ \$1,500 ~~[in state funds with additional federal funds set aside, depending on eligibility and availability, per account]~~ to be awarded to parents and guardians of eligible students.
- (2) Parents and guardians with more than one eligible student may apply and receive a grant for each eligible student.
- (3) Approved parents and guardians will receive an award notification email from the marketplace vendor and may begin spending account funds upon completion of account setup.
- (4) Parents and guardians who receive an award notification but whose student no longer qualifies under subsection (c) ~~(b)~~ of this section shall notify TEA of their student's change in eligibility status.
- (5) Within 30 calendar days from receiving an award notification email, parents and guardians must:
  - (A) access or log in to their account or the account may be subject to reclamation; and
  - (B) agree to and sign the ~~[SSES]~~ parental ~~agreement~~ ~~[acknowledgement affidavit]~~.

(h) ~~(g)~~ Use of funds. Use of ~~[SSES]~~ program funds provided to parents and guardians are limited as follows.

- (1) Only ~~[supplemental special education instructional]~~ materials and ~~[supplemental special education]~~ services available through the marketplace of approved providers and vendors may be purchased with ~~[SSES]~~ program funds.

- (2) Materials ~~[Supplemental special education instructional materials]~~ and services must directly benefit the eligible student's educational needs.
  - (3) Materials ~~[Supplemental special education instructional materials]~~ shall be used in compliance with TEA purchasing guidelines.
  - (4) If TEA approves vendors for a category of ~~[instructional]~~ material under subsection (e) ~~[(d)]~~ of this section, ~~[supplemental special education instructional]~~ materials must be purchased from the TEA-approved vendor for that category of ~~[supplemental special education instructional]~~ material. If TEA does not establish criteria for a category of ~~[supplemental special education instructional]~~ materials, funds in a student's account may be used to purchase the ~~[supplemental special education instructional]~~ materials from any vendor.
  - (5) The contracted ESC has full authority to reject or deny any purchase.
  - (6) Parents and guardians may not use [SSES] program funds for reimbursement of goods or services obtained outside of the marketplace. Program ~~[SSES program]~~ funds shall not be paid directly to parents or guardians of eligible students.
- (i) ~~[(h)]~~ Account use restrictions. TEA may, subject to the appeal process referenced in subsection (f)(5) ~~[(e)(4)]~~ of this section, close or suspend accounts and reclaim a portion or all of the funds from accounts in the marketplace if:
- (1) the ~~[supplemental special education]~~ materials or services that parents or guardians attempt to purchase are not educational in nature or are deemed to be in violation of the purchasing guidelines set forth by TEA;
  - (2) it is determined that the ~~[supplemental special education]~~ materials or services purchased do not meet the definitions in subsection (b)(5) ~~[(a)(5)]~~ and (6) of this section;
  - (3) the [SSES] program parental agreement ~~[acknowledgement affidavit]~~ is not signed within 30 calendar days of receipt of account email from the marketplace vendor; or
  - (4) a student no longer meets the eligibility criteria set out in subsection (c) ~~[(b)]~~ of this section.
- (j) ~~[(i)]~~ Requirements to provide information. School districts and open-enrollment charter schools shall notify families of ~~[their eligibility for]~~ the [SSES] program and , unless the school district or charter school has verified that a parent has already received or applied for a program grant, shall provide the following at the student's admission, review, and dismissal (ARD) committee meeting:
- (1) instructions ~~[on applying]~~ and resources on accessing the online accounts , including the application window established by TEA ; and
  - (2) information about the types of goods and services that are available through the program [SSES] grant.
- (k) ~~[(j)]~~ Restrictions. A student's ARD committee may not consider a student's current or anticipated eligibility for any ~~[supplemental special education instructional]~~ materials or services that may be provided under this section when developing or revising a student's IEP ~~[individualized education program]~~ , when determining a student's educational setting, or in the provision of a free appropriate public education.