

## 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) Definitions. For the purposes of this section, the following definitions apply.
- (1) Eligible student--A student who meets all program eligibility criteria under 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 the Texas Education Agency (TEA) to create an online marketplace for the use of SSES program funds.
  - (5) Supplemental special education instructional 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) Supplemental special education 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.
- (b) Eligibility criteria. All students currently enrolled in a Texas public school district or open-enrollment charter school who are served 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 an SSES grant.
- (c) Awards.
- (1) Parents and guardians of eligible students may receive grants as long as funds are available of up to \$1,500 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. 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 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.
- (d) 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 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 SSES marketplace, including communication with parents and guardians about purchase order requests;
  - (E) increasing the number of qualified service providers in the marketplace; and
  - (F) 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.
- (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) 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, per eligible student to be used to purchase supplemental special education services and supplemental special education instructional materials.
  - (4) Parents and guardians of students who are deemed not eligible or who are determined to have violated account use restrictions under subsection (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.

- (5) If necessary, eligible students will be placed on a waitlist and parents and guardians will be notified. Should additional funds become available, priority will be given in the order established by the waitlist and in accordance with subsection (c) of this section.
  - (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.
- (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 (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 acknowledgement affidavit.
- (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) Supplemental special education instructional materials and services must directly benefit the eligible student's educational needs.
  - (3) 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 (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. SSES program funds shall not be paid directly to parents or guardians of eligible students.
- (h) Account use restrictions. TEA may, subject to the appeal process referenced in subsection (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 (a)(5) and (6) of this section;

- (3) the SSES program parental 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 (b) of this section.
- (i) Requirements to provide information. School districts and open-enrollment charter schools shall notify families of their eligibility for the SSES program and shall provide the following at the student's admission, review, and dismissal (ARD) committee meeting:
  - (1) instructions and resources on accessing the online accounts; and
  - (2) information about the types of goods and services that are available through the SSES grant.
- (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 individualized education program, when determining a student's educational setting, or in the provision of a free appropriate public education.

*Statutory Authority: The provisions of this §102.1601 issued under the Texas Education Code, §§29.041-29.049.*

*Source: The provisions of this §102.1601 adopted to be effective December 12, 2021, 46 TexReg 8345; amended to be effective April 18, 2023, 48 TexReg 1957.*