

South Texas ISD Special Education
Child Find Operating Procedures 2020-2021



**Special Education
Operating Procedures**



2020-2021

SOUTH TEXAS INDEPENDENT SCHOOL DISTRICT SPECIAL EDUCATION OPERATING PROCEDURES

South Texas ISD has entered into an Interlocal Agreement to cooperatively operate its special education programs under the authority of Tex. Ed. Code § 11.157. South Texas ISD and Special Education Services Cooperative may provide for the efficient delivery of legally required special education and related services to the South Texas ISD eligible students with disabilities as set forth in the Interlocal Agreement, including the implementation of these Special Education Operating Procedures.

1.0 CHILD FIND

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South Texas ISD Board Policy along with these *Special Education Operating Procedures* constitute the Policies and Procedures of South Texas ISD designed to be consistent with the State policies and procedures developed pursuant to the IDEA. South Texas ISD *Special Education Operating Procedures* are not to be for the purpose of creating a requirement that is not otherwise imposed by the Individuals with Disabilities Education Improvement Act ("IDEA"), together with its implementing federal regulations, state statutes and rules, as they shall from time to time be amended, and shall not be construed to create a higher standard than that established by IDEA. These *Special Education Operating Procedures* will be posted on South Texas ISD's website. These *Special Education Operating Procedures* should be interpreted consistent with the IDEA. South Texas ISD's *Special Education Operating Procedures* are reviewed and updated, as needed, on at least an annual basis. South Texas ISD will make timely changes to policies and procedures in response to IDEA amendments, regulatory or rule changes, changes to state policy, or new legal interpretation as are necessary to bring South Texas ISD into compliance with the requirements of IDEA. South Texas ISD maintains systems to ensure that all students with disabilities residing in the District, including students with disabilities attending non-public schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and provided a free appropriate public education. South Texas ISD maintains systems to ensure that students with disabilities and their parents are afforded the procedural safeguards required under the IDEA (and its implementing federal regulations, state statutes and rules) including with respect to the confidentiality of records and personally identifiable information.

1.0 CHILD FIND.

The South Texas Independent School District (STISD) has an obligation to identify, locate and evaluate each child, birth to age 21 inclusive, residing within the jurisdiction of the District who has a disability or is suspected of having a disability, regardless of the severity of the disability, and who is in need of special education and related services. This *Child Find* obligation—mandated by the Individuals with Disabilities Education Improvement Act (IDEIA or, more commonly, IDEA) and Texas special education law¹—extends to all children with disabilities, including those who are homeless, highly mobile, migrants, in foster care, homeschooled, court-involved or attending private schools within the jurisdiction of the District.²

The District annually notifies and informs the South Texas ISD community of a student’s right to a free appropriate public education and the programs and services available to eligible students, as well as the right to request an evaluation for special education and related services. The District endeavors to distribute written information in both English and Spanish to every enrolled student’s family regarding IDEA’s *Child Find* and free appropriate public education (FAPE) requirements, to inform them of the options and requirements for identifying students who may be suspected of having a disability and have an educational need for special education and specially designed instruction. The District’s community-wide efforts may include:

- posting or linking the District’s *Child Find* notice on the District’s website; and
- placing a *Child Find* notice in locations where potentially eligible children and their parent(s) or legal guardian(s) are likely to see it, like disability-related community agencies, hospitals or daycare centers.

The District’s *Child Find* notice is included in both English and Spanish in the Campus Parent Student Handbook which is updated annually (and/or) The District’s *Child Find* notice is available to the public and to parents in both English and Spanish on the District’s website <https://www.stisd.net/about/special-education>. Together with the District’s annual *Child Find* notice, the District includes information indicating where members of the South Texas ISD community can access the District’s processes and procedures for initiating a referral for special education services eligibility evaluation.³ The District also offers annual training to teachers and staff regarding the District’s responsibility to actively identify and appropriately refer for evaluation students suspected of being in need of special education and related services, consistent with these *Special Education Operating Procedures* (“Operating Procedures”).]

¹ 34 C.F.R. § 300.111(a); Tex. Ed. Code § 29.001

² 34 C.F.R. § 300.111(c). Homeless and highly mobile students are served via the District’s homeless education liaison Jeff Hembree as part of the District’s participation in TEA’s *Texas Education for Homeless Children and Youth (TEHCY)* program.

³ Tex. Ed. Code § 29.023(b)

1.1 *What steps does the District take prior to an initial evaluation to ensure students are identified and evaluated for special education appropriately and in a timely manner?*

Prior to referral for a full individual and initial evaluation, students experiencing difficulty in the general classroom should be considered for response to evidence-based intervention and other academic or behavior support services. “If the student continues to experience difficulty in the general classroom after the provision of interventions, District personnel will refer the student for a full individual and initial evaluation.”⁴ Notwithstanding this provision, these general education or response to intervention strategies will not be used to delay or deny the provision of an evaluation.⁵

PRACTICE GUIDE—Teachers who provide instruction to students may be trained concerning the District’s referral process and informed concerning the research-based interventions available in the District. Communication between general education teachers and campus staff who attend the MTSS meeting, concerning the interventions used and the results of those interventions should occur regularly.

If parental or guardian consent is obtained for an evaluation, the District will consider and document the provision of any steps taken concurrently with the special education referral or evaluation process to address the academic or behavioral needs of the student giving rise to the referral. These steps may include the following—

- If a campus receives an initial referral for a student who is not currently receiving **evidence-based general education interventions or Multi-Tiered Systems of Support (MTSS)** available to all students, a designated campus administrator should promptly convene a meeting with the parent or guardian, student (as appropriate), and at least one of the student’s general education teachers (preferably from one or more of the areas of academic and/or behavioral concern). The meeting’s purpose will be to develop a plan of evidence-based general education interventions or MTSS. This meeting may not be used to delay or deny an evaluation.
 - If the student has been receiving evidence-based general education intervention or MTSS, the campus administrator should promptly convene a meeting with the parent or guardian, student (as appropriate), and at least one of the student’s general education teachers (preferably from one or more of the areas of academic and/or behavioral concern) to review and revise the student’s current interventions and general education services plan, as appropriate. Such

⁴ 19 TEX. ADMIN. CODE § 89.1011(a).

⁵ *Lisa M. v. Leander Indep. Sch. Dist.*, 924 F.3d 205, 209 n.4 (5th Cir. 2019); *Spring Branch Independent School District v. O.W. by Hannah W.*, 961 F.3d 781(5th Cir. June 12, 2020)

meetings should recur at regular, reasonable intervals throughout the pendency of the referral and/or evaluation process.

- IDEA does not prohibit a local campus within the District from “**screening**” a student to collect data that may be considered when determining whether the student is suspected of having a disability. Parental consent is not required before a campus-based committee reviews existing data as part of the special education referral process. Likewise, parental permission is not required before administering screenings or other assessments that are administered to all students generally without the requirement of parental consent. Written notice will be provided to parents of the scheduled screening or assessment; however, a campus will not use screening procedures to delay or deny the provision of a full individual and initial evaluation.⁶
- Students suspected of having a disability under Section 504 should be referred for an evaluation by a **Campus Section 504 Committee** and, if needed, the development by that Committee of an accommodation plan under Section 504. These referrals should be directed to the student’s Campus Section 504 Coordinator. If a student’s Section 504 Committee determines that the student has a disability that may require specialized instruction to make progress in the general curriculum, or if the student continues to experience difficulty in the general education classroom even with the supports specified in a 504 accommodation plan, the Section 504 Committee should refer the student to the Director of Special Education or designee to determine whether a full individual and initial evaluation is appropriate under the circumstances.
- For students who transfer to the District from a residential facility or other private school, the campus administrator should obtain written consent from the student’s parent or guardian to communicate with and request records from the residential facility or other private school and convene a meeting to discuss whether a referral for special education and related services is appropriate.

PRACTICE GUIDE—Review enrollment records to determine whether the student previously accessed special education and related services while in attendance at a public school.

- Students suspected to have **dyslexia and related disorders** may be referred for an initial evaluation for special education and related services or to a Section 504 Committee. In accordance with TEA’s *The Dyslexia Handbook* (2018 Update)⁷, if the LSSP/Educational Diagnostician suspects that a student has dyslexia or a related disorder but does not require specialized instruction, the student should be referred to the Section 504 Committee, which will assess the qualification of the student and whether the student may receive standard protocol dyslexia instruction and accommodations. If the LSSP/Educational Diagnostician determines that data leads to the suspicion of dyslexia or a related disorder and that the student needs specially designed instruction as a result of dyslexia or a related disorder, the student should be

⁶ Letter to Mills (OSEP 05/02/19).

⁷ TEA’s *The Dyslexia Handbook* (2018 Update) is available at <https://tea.texas.gov/academics/dyslexia/>.

referred to special education for a potential full individual and initial evaluation, if appropriate.

PRACTICE GUIDE—If the results of reading instruments administered by general education teachers (to students in kindergarten through 2nd Grade) indicate a risk for dyslexia or other reading difficulties, the results may be shared with the student’s evaluation team for referral consideration.⁸

1.2 *Who is eligible for the District’s program of special education and related services?*

The District provides special education and related services to eligible students ages 3 through 21 who reside within the District.⁹ To be eligible for the District’s program of special education and related services, a student must (a) have one or more of the thirteen qualifying disabilities listed below and (b) need special education and related services—*Specially Designed Instruction* (SDI)—because of the disability.¹⁰ A free appropriate public education is also available to children with visual or auditory impairments residing within the District from birth through age 21.¹¹

Special education means “specially designed instruction, at no cost to the parents, to meet the unique needs of a student with a disability.”¹² *Specially Designed Instruction* (SDI) means—

- “adapting, as appropriate to the needs of an eligible student under this part, the content, methodology, or delivery of instruction-
 - To address the unique needs of the student that result from the student's disability; and
 - To ensure access of the student to *the general curriculum*, so that the student can meet *the educational standards within the jurisdiction of the public agency that apply to all children.*”¹³

The general curriculum and educational standards that “apply to all children” in South Texas ISD are the **Texas Essential Knowledge and Skills (TEKS)** as well as the District’s Policy **EIE(Local)**.¹⁴ The state-wide assessments that

⁸ Tex. Ed. Code § 28.006

⁹ 19 TEX. ADMIN. CODE § 89.0135(a)

¹⁰ 20 U.S.C. § 1402(3); 34 C.F.R. § 300.8

¹¹ 19 TEX. ADMIN. CODE § 89.0135(b)

¹² 34 C.F.R. § 300.39(a)(1)

¹³ 34 C.F.R. § 300.39(b)(3)(emphasis added)

¹⁴ The educational standards applicable to all students in the state of Texas are also outlined in Tex. Ed. Code § 28.002 and in 19 TEX. ADMIN. CODE § 74.1.

determine a student's progress toward meeting those educational standards are the **State of Texas Assessments of Academic Readiness (STAAR)**.

Special Education or *Specially Designed Instruction* (SDI) also includes—

- speech-language pathology services;
- any other related service, if the service is considered special education rather than a related service under state standards;
- travel training; and
- vocational education.¹⁵

PRACTICE GUIDE— Some examples of SDI include delivery of a specialized reading program in a small group setting 4 days a week for 30 minutes a day; individualized social skills programs; modified curriculum; adaptive physical education; or instruction in the use of Braille or specific technology to access curricular content or to provide responses to enable effective progress monitoring and functional performance data collection.

Subject to the age limitations specified above, students may be eligible for special education and related services under these categories of disability specified under state and federal law: autism, deaf-blindness, auditory impairment, emotional disturbance, intellectual disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech impairment, traumatic brain injury, visual impairment, and “noncategorical early childhood.”¹⁶

Children between the ages of 3-5 who are evaluated as having an intellectual disability, an emotional disturbance, a specific learning disability or autism may be described as “noncategorical early childhood” for the purposes of special education eligibility.¹⁷

To comply with child find requirements, the District must screen or test all students for dyslexia and related disorders at appropriate times in accordance with The Dyslexia Handbook and state law. Specifically, the law requires that all kindergarten and first grade students be screened for dyslexia and related services. In addition, the law requires the District to administer to students in kindergarten, first grade, and second grade a reading instrument to diagnose student reading development and comprehension. This law also requires the District to administer a reading instrument at the beginning of seventh grade to students who did not demonstrate reading proficiency on the sixth-grade state reading STAAR.

Campus Personnel must provide parents or guardians of students suspected of having dyslexia or a related disorder a copy or a link to the [electronic version of The Dyslexia Handbook](#) as soon as the suspicion arises.

Consideration of eligibility for special education and related services begins with a referral for a special education evaluation—a full individual and initial evaluation.¹⁸

¹⁵ 34 CFR § 300.39(a)(2)

¹⁶ 34 C.F.R. § 300.8(c) ; Tex. Ed. Code § 29.003(b); 19 TEX. ADMIN. CODE § 89.1040(c)

¹⁷ 19 TEX. ADMIN. CODE § 89.1040(c)(13)

¹⁸ 19 TEX. ADMIN. CODE § 89.1011

PRACTICE GUIDE— While the ARD committee will consider records from private providers or private evaluators, including physicians, the ARD committee is not required to adopt specific eligibilities or other recommendations from those reports. Any decisions to reject recommended eligibilities or services may be described and explained in the Prior Written Notice with reference to the District's evaluation reports.

1.3 *Who can initiate a referral for a Full Individual and Initial Evaluation for Special Education and Related Services?*

A referral for a special education evaluation may be initiated by school personnel, a student's parent or legal guardian, or another person involved in the education or care of the student.¹⁹

Should an administrator, teacher, parent or legal guardian believe that there is reason to suspect a student has a disability and is in need of special education, even if they are progressing from grade to grade, they may initiate the referral process.

The referral may be made verbally or in writing. A written request for a special education evaluation is not required by IDEA or South Texas ISD. Written referrals should be directed to the South Texas ISD's Director of Special Education or to campus administrator. Any employee of the District receiving a verbal or written referral should communicate the referral to campus administrator. District staff should make any referrals for special education in writing to campus administrator.

1.4 *How should the District respond when it receives a referral for special education?*

Referrals should be considered by the LSSP/Educational Diagnostician/SLP or other qualified professional, as outlined below, to determine whether there is reason to suspect that the student has a disability and is in need of special education and related services. Each campus should have a designated staff member responsible for receiving referrals from the campus administrator. All referrals should be forwarded to Special Education Department. If a parent or legal guardian makes a referral to a general education teacher, a paraprofessional or campus office staff, the parent should be directed to the campus administrator on the student's campus who is responsible for receiving referrals.

If a parent, legal guardian or adult student verbally requests a special education evaluation, the District staff who received the verbal request should report the request to campus administrator or the aforementioned designated staff for the student's home campus. The campus administrator or

¹⁹ 19 TEX. ADMIN. CODE § 89.1011(a)

designated staff should contact the requestor either by telephone or via email to gather more information about the request.

When the District receives a request for an initial evaluation, the campus administrator, and/or designated campus staff, should promptly review the student's record and document any consideration that has been given to alternatives to special education, including but not limited to general education academic and behavioral interventions; *RtI* data; remedial instruction; tutoring; compensatory education pursuant to Tex. Ed. Code § 29.081 ("services designed to supplement

the regular education program for students identified as at risk of dropping out of school"); **Multi-Tiered Systems of Support (MTSS)**;²⁰ and/or Dyslexia-related general education services.

PRACTICE GUIDE— When the District receives privately-completed evaluation reports or recommendations, the ARD committee should consider that information. In many instances, the student's ARD committee will need to seek consent from the parent(s) to complete the District's evaluation because it relies on school-based evaluation instruments and observations that incorporate special education standards.

If a student's parent(s), legal guardian(s), or District staff submits a written request for a full individual and initial evaluation for special education and related services to the District's Director of Special Education or to an administrative employee of the District, the personnel designated below will take the following steps:

- **Within 15 school days of the Director of Special Education or administrative employee's receipt of the written request for an initial special education evaluation,** a licensed specialist in school psychology (LSSP), an educational diagnostician, or other appropriately certified or licensed practitioner with experience or training in the area of the suspected disabilities designated by the Director of Special Education may, as appropriate—
 - Review the records and performance data of the student in order to determine if there is sufficient evidence to suspect a disability. Information reviewed shall include, but is not limited to, all individual and group standardized assessments, *including evaluations provided by the parent or guardian completed privately*; standards of learning test scores; school enrollment history; attendance records; student work samples; and teacher observational information.
 - Consult with the student's general education teachers and other campus staff familiar with the student to review the general education supports and services, curricular modifications, instructional methodologies or evidence-

²⁰ TEA describes MTSS as a school-wide framework designed to provide varying levels of support to meet the academic, behavioral, and social/emotional needs of students and includes *RtI* for academics and/or behavior and other evidence-based early intervention strategies.

based classroom accommodations or interventions that have been used with the student prior to referral, including the use of any **Multi-Tiered Systems of Support (MTSS)**, such as *Response to Intervention (RtI)*, *Leveled Literacy Interventions (LLI)*, and other evidence-based general education interventions, tutorial, remedial, compensatory and other academic or behavior support services.²¹

- Contact the parent, legal guardian or adult student to provide an overview of the District's special education process and identify the date by which informed written consent for the evaluation may be obtained (i.e., no later than 15 school days after receiving the written request for an initial evaluation).²²
- **No later than 15 school days after the Director of Special Education or administrative employee's receipt of the written request for an initial special education evaluation, the campus administrator shall—**
 - Ensure the District provides the parent(s), legal guardian and/or adult student with a copy of TEA's most recent *Notice of Procedural Safeguards*.²³
 - A parent, legal guardian or adult student may choose to receive the *Notice of Procedural Safeguards*, as well as the Prior Written Notice discussed below, by email, if the District makes that option available. If the parent or legal guardian does not affirmatively elect to receive the aforementioned notices by email, the District will mail or hand-deliver the notice(s) and document the method of delivery.²⁴
 - Provide Prior Written Notice of the District's proposal to conduct a full individual and initial evaluation (*Notice of Proposed Evaluation*) and an opportunity for the parent, legal guardian or adult student to give informed written consent for the evaluation, *if there is evidence of a suspected disability and, as a result of the suspected disability, a suspicion that the student may require specially designed instruction based on the information obtained during the 15-school day period described above*.²⁵
 - Prior Written Notice. The District's *Notice of Proposed Evaluation* shall describe any evaluation procedures that the District proposes to conduct.²⁶ Please see the District's Evaluation procedures set out

²¹ 19 TEX. ADMIN. CODE § 89.1011(a)

²² Tex. Ed. Code § 29.004; 19 TEX. ADMIN. CODE § 89.1011(b); 19 TEX. ADMIN. CODE § 89.1040(b)

²³ 34 C.F.R. § 300.504

²⁴ 34 C.F.R. § 300.505

²⁵ 19 TEX. ADMIN. CODE § 89.1011(b)(1)

²⁶ 34 C.F.R. § 300.304(a)

in **Section 2.0: EVALUATION** for additional requirements regarding the District's *Notice of Proposed Evaluation*.

- Informed Written Consent. The District shall document that the parent, legal guardian or adult student has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, and the mode of communication. The District shall also document that the parent, legal guardian or adult student acknowledged understanding and agreeing in writing to the carrying out of the activity for which his or her consent is sought (e.g., a full individual and initial evaluation). The consent will describe the activity and indicate which educational records, if any, will be released and to whom those records will be released.²⁷
 - Notice and Consent by Email. The District may provide prior written notice via email if the District offers and the parent elects to receive the notice via email.²⁸ The District may also obtain a parent's or a guardian's informed written consent for an evaluation by using a record and signature in electronic form that identifies and authenticates the person or guardian as the source of the consent and indicates the parent's or guardian's approval of the information contained in the electronic signature.²⁹
 - If the parent, legal guardian or adult student does not provide consent for the initial special education evaluation, the District is relieved of its *Child Find* duty and its obligation to provide the student with a free appropriate public education pursuant to IDEA.³⁰ However, the District reserves the right in its sole discretion to file a request for a special education due process hearing to override a lack of parental consent for such evaluation. Designated staff should provide the parent, legal guardian or adult student with a ready, willing, and able letter regarding the District's intent to complete the evaluation with parental consent, together with prior written notice (*Notice of Proposed Evaluation*) documenting the District's offer to evaluate and the basis for the offer to evaluate and providing the parent or guardian with a copy of **TEA's Procedural Safeguards Notice**. Please see **Section 3.4: FAPE**.

²⁷ 34 C.F.R. § 300.9; Tex. Ed. Code § 29.004(a)(1)

²⁸ 34 C.F.R. § 300.505

²⁹ *Part B Procedural Safeguards in the COVID-19 Environment Q&A Document* (June 30, 2020). OSEP. June 30, 2020.

³⁰ 34 C.F.R. § 300.300(a)(3)

- Provide the parent, legal guardian, or adult student with prior written notice of the District's decision not to conduct an evaluation, *if there is no evidence of a suspected disability or a suspicion that the student may require special education and related services.*
 - If appropriate, the student may be referred to the District's Section 504 Coordinator or local campus designee for a potential Section 504 evaluation
 - Prior Written Notice. The LSSP/Educational Diagnostician/SLP will prepare the Prior Written Notice to include an explanation of why the District refuses to conduct an initial evaluation as well as a description of the information (assessments, records, reports or observations) that the District used as a basis for its refusal to evaluate.³¹ The District will provide this prior written notice by means reasonably designed to ensure that it is received by the parent, legal guardian or adult student, and document the fact that the notice was sent. This notice will be provided in a language that is understandable to the general public and also in the native language of the parent, unless it is clearly not feasible to do so.³² Please see Section 1.5: CHILD FIND.

1.5 *How does the District attempt to ensure that parents or guardians of Limited English Proficient students are included in the District's Child Find efforts and understand the District's special education process?*

If the parent(s), legal guardian(s) or adult student is limited English proficient and the parent's or guardian's native language is Spanish, the District will provide Admission, Review and Dismissal (ARD) committee meeting notices and Prior Written Notices, as well as **TEA's Notice of Procedural Safeguards** and other special education related documents, to the parent or guardian in **Spanish** (TEA's **Aviso Sobre Procedimientos de Protección**). If the parent or guardian is limited English proficient and the parent's or guardian's native language is Spanish, the District will also provide either all of the text (comparable rendition) of the written Individualized Education Program (IEP) translated into Spanish or an audio recording of the IEP translated into Spanish. The District may also audio record an ARD committee meeting at which the parent or guardian was assisted by an interpreter and offer the parent or guardian an audio recording of the meeting; however, such recording shall not substitute for a written or audio recorded translation of the IEP unless it includes an oral translation into Spanish of all of the content in the student's IEP.³³

³¹ 34 C.F.R. § 503(b)

³² 34 CFR § 300.503(c)

³³ 19 TEX. ADMIN. CODE § 89.1050(i); Tex. Ed. Code § 29.005(d)

If the parent's, guardian's or adult student's native language is other than English or Spanish, the District will make a good faith effort to provide notices to the parent or guardian in the parent's or guardian's native language, to provide a written or audio recorded translation of the IEP in the parent's or guardian's native language, and to facilitate the parent's or guardian's participation in any ARD committee meeting, including by arranging for an interpreter, unless it is clearly not feasible to do so. The term "native language" when used with respect to an individual who is limited English proficient, means the language normally used by the individual." ³⁴

1.6 What happens when the parent or guardian of a student attending private school or being homeschooled in the District requests a referral for a special education evaluation?

The District is responsible for identifying, locating and evaluating those students who reside within the jurisdiction of the District but who are parentally placed in private schools or homeschooled. The parent, legal guardian or teacher of a resident student who is parentally placed in private school or home instructed may refer a student suspected of having a disability and in need of special education and related services to the student's home campus for District zoning purposes.

To meet its *Child Find* obligation to students who are homeschooled or attend private schools, the District offers to meet at least annually with representatives from private schools within the District and with parents who have placed their students in a private school within the District or who home-school their students, about special education and how to refer a student for a special education evaluation, and the special education and related service options available in the event their student is eligible.

If the parent or legal guardian of a student who is home-instructed or who is placed in a private school is offered an initial evaluation by the District but does not provide consent for the evaluation, the District may not use the special education dispute resolution process to override the lack of consent.

1.7 What about students who transfer?

If a student is in the process of being evaluated for special education eligibility by another public school district and enrolls in the District before the evaluation is completed, the District will coordinate with the student's previous school district to ensure prompt completion of the initial evaluation. If the student transfers from another public school district when an initial evaluation is pending, the timelines for conducting the evaluation apply to South Texas ISD unless:

- the District is making sufficient progress to ensure a prompt completion of the evaluation; and
- the parent and the District agree to a specific time when the evaluation will be completed.

³⁴ 20 U.S.C. § 1401(30); 19 TEX. ADMIN. CODE § 89.1050(f)

If a student transfers from another school district in Texas with an Individualized Education Plan (IEP), the District will provide a free appropriate public education to the transfer student by providing services comparable to the services described in the student's IEP from the student's previous school district until:

- the District adopts the student's IEP from the previous school district, or
- the District develops, adopts and implements a new IEP in accordance with the procedures outlined in **Section 3.0: FAPE**.³⁵

If a student transfers from another state with an IEP, the District will offer services comparable to the services described in the IEP from the sending school district until the District takes the following actions:

- conducts a new full and individual evaluation, as described in **Section 2.0: EVALUATION**, if the ARD Committee determines that a new evaluation is necessary; and
- develops, adopts and implements a new IEP, if appropriate, in accordance with the procedures outlined in **Section 3.0: FAPE**.³⁶

Additionally, the District will take reasonable steps to promptly obtain a transfer student's special education and general education records from the sending school district.³⁷

1.8 What protections are available for students who have not been identified but may qualify for IDEA's disciplinary safeguards?

Students not yet eligible for special education and related services may be entitled to the disciplinary protections afforded eligible students, including the manifestation determination review process. The District may be obligated to provide a manifestation determination review and other disciplinary change of placement protections for a student even if the student is not yet determined to be eligible for special education and related services at the time of the violation of the District's conduct code. Disciplinary protections shall be afforded to a student if the District "had knowledge" that the student is a student with a disability prior to the behavioral incident at issue. The District is considered to have knowledge (1) if the parent or guardian expressed concern in writing to supervisory or administrative personnel, or a teacher of the student, that the student is in need of special education and related services; (2) the parent or guardian of the student requested an evaluation of the student pursuant to IDEA; or (3) the teacher of the student, or other District personnel, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or to other supervisory personnel of the District. The District does not have knowledge that the student is a student with a disability if the District

³⁵ 34 C.F.R. § 300.323(e)

³⁶ 34 C.F.R. § 300.323(f)

³⁷ 34 C.F.R. § 300.323(g)

sought and the parent refused to permit the student to be evaluated or declined special education and related services, or if the student was evaluated by the District and determined to be ineligible by a duly constituted Admission, Review and Dismissal (ARD) committee.³⁸

³⁸ 34 C.F.R. § 300.534

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2.14 EVALUATIONS SUPPLEMENT—AREAS OF ELIGIBILITY

[**AUTISM**](#)

[**DEAF-BLINDNESS**](#)

[**DEAF OR HARD OF HEARING**](#)

[**EMOTIONAL DISTURBANCE**](#)

[**INTELLECTUAL DISABILITY**](#)

[**MULTIPLE DISABILITIES**](#)

[**ORTHOPEDIC IMPAIRMENT**](#)

[**OTHER HEALTH IMPAIRMENT**](#)

[**SPECIFIC LEARNING DISABILITY**](#)

[**SPEECH OR LANGUAGE IMPAIRMENT**](#)

[**TRAUMATIC BRAIN INJURY**](#)

[**VISUAL IMPAIRMENT**](#)

[**NONCATEGORICAL EARLY CHILDHOOD**](#)

[**FOR MORE INFORMATION ABOUT EACH AREA OF ELIGIBILITY**](#)

South Texas ISD Board Policy along with these *Special Education Operating Procedures* constitute the Policies and Procedures of South Texas ISD, designed to be consistent with the State policies and procedures developed pursuant to the IDEA. South Texas ISD *Special Education Operating Procedures* are not to be for the purpose of creating a requirement that is not otherwise imposed by the Individuals with Disabilities Education Improvement Act ("IDEA"), together with its implementing federal regulations, state statutes and rules, as they shall from time to time be amended, and shall not be construed to create a higher standard than that established by IDEA. These *Special Education Operating Procedures* will be posted on South Texas ISD's website. These *Special Education Operating Procedures* should be interpreted consistent with the IDEA. South Texas ISD's *Special Education Operating Procedures* are reviewed and updated, as needed, on at least an annual basis. South Texas ISD will make timely changes to policies and procedures in response to IDEA amendments, regulatory or rule changes, changes to state policy, or new legal interpretation as are necessary to bring South Texas ISD into compliance with the requirements of IDEA. South Texas ISD maintains systems to ensure that all students with disabilities residing in the District, including students with disabilities attending non-public schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and provided a free appropriate public education. South Texas ISD maintains systems to ensure that students with disabilities and their parents are afforded the procedural safeguards required under the IDEA (and its implementing federal regulations, state statutes and rules) including with respect to the confidentiality of records and personally identifiable information.

South Texas ISD Special Education

FAPE Operating Procedures 2020-2021



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SOUTH TEXAS ISD INDEPENDENT SCHOOL DISTRICT SPECIAL EDUCATION OPERATING PROCEDURES

The South Texas ISD has entered into an Interlocal Agreement to cooperatively operate its special education programs under the authority of Tex. Ed. Code § 11.157. South Texas ISD and Special Education Services Cooperative may provide for the efficient delivery of legally required special education and related services to the South Texas ISD's eligible students with disabilities as set forth in the Interlocal Agreement, including the implementation of these Special Education Operating Procedures.

3.0 FREE APPROPRIATE PUBLIC EDUCATION (FAPE)

- 3.1 [*What is a free appropriate public education \(FAPE\)?*](#)
- 3.2 [*How is a student's IEP developed?*](#)
- 3.3 [*What is in a student's IEP?*](#)
- 3.4 [*How does the District use Prior Written Notice \(PWN\) to keep parents informed about the decisions of a student's ARD committee?*](#)
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- 3.8 [*When and how is a student's IEP updated?*](#)
- 3.9 [*How does the District ensure parents are included in the IEP development process?*](#)
- 3.10 [*How does the District ensure Limited English Proficient parents are included in the IEP development process?*](#)
- 3.11 [*How does the District ensure that a student's IEP is implemented?*](#)
- 3.12 [*How does the District ensure adult students are included in the IEP development process?*](#)
- 3.13 [*What happens when a student with an IEP graduates with a regular high school diploma?*](#)
- 3.14 [*What are the District's obligations to children transitioning from IDEA Part C Early Intervention Services \(EIS\) to IDEA Part B Early Childhood Special Education \(ECSE\)?*](#)
- 3.15 [*Are there limitations on the right to FAPE?*](#)
- 3.16 [*How does the District provide FAPE via virtual or remote instruction?*](#)

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3.0 FREE APPROPRIATE PUBLIC EDUCATION

3.1 *What is a free appropriate public education (FAPE)?*

Every eligible **South Texas ISD** student with a disability is entitled to a free appropriate public education. Each student's Individualized Education Program (IEP) is the centerpiece of the District's plan for providing appropriate special education and related services that are reasonably calculated to enable the student to make progress appropriate in light of the student's unique and individual circumstances.¹

PRACTICE GUIDE—The District shall ensure that the documents produced at a student's ARD committee meeting reflect a consideration of the following 4 factors:

- **The student's IEP is individualized and based on the student's assessment and performance.** For example, goals and objects are appropriately ambitious in light of the student's present levels of academic achievement and functional performance. The student's program conforms to current FIE findings and recommendations.
- **The program is implemented in the student's least restrictive environment (LRE).** For example, the ARD committee may review the supplementary aides and services that a student may have received in the general education setting, together with the placement recommendations in a student's most recent FIE.
- **The services are provided in a coordinated and collaborative manner by the key stakeholders.** For example, the ARD committee may obtain parental consent to discuss a student's services with any relevant outside provider or private evaluator. Campus staff and administrators may document any staff meetings regarding the student and her or his educational program. Individual conferences may be held with the parent explaining assessments or other programmatic elements and may promote collaborations, and these efforts are also documented.
- **The student must demonstrate positive academic and non-academic benefits.** For example, the ARD committee may consider the student's achievement on state-mandated assessments, District-wide assessments, benchmarks, grades, progress reports, evaluation results, and participation and engagement in the educational environment, including, as appropriate, extracurricular activities. Behavioral progress as demonstrated by the student's acquisition of social and behavioral skills that may be included in counseling or social skills programming.

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¹ 34 C.F.R. § 300.17; *Endrew F. ex rel. Joseph F. v. Douglas County School Dist. RE-1*, 137 S.Ct. 988 (2017); *E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754 (5th Cir. 2018).

² *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir.1997).

3.2 *How is a student's IEP developed?*

For each eligible student with a disability, the ARD Chair shall establish an ARD committee.³ Each student's ARD committee shall include the following participants:⁴

- a parent or adult student;⁵
- a general education teacher of the student if the student is or may be participating in the general education environment.⁶ The student's general education teacher, shall, to the extent appropriate, participate in the development of the student's IEP, including the determination of appropriate positive behavioral interventions and supports and other strategies for the child, supplementary aids and services, program modifications, and support for school personnel;
- a special education teacher of the student. The special education teacher or provider who is a member of the student's ARD committee should be the person who is responsible for implementing the IEP. For example, if the student's disability is a speech impairment, the special education teacher or special education provider could be the speech language pathologist;⁷
- a representative of the District who is qualified to provide, or supervise the provision of, specially designed instruction and is knowledgeable about the general education curriculum and about the availability of District resources. The District's representative may be the Director of Special Education or campus designee or a campus administrator acting on behalf of the District. The choice of the representative is at the discretion of the District, so long as the District's representative meets these criteria;⁸
- an individual who can interpret the instructional implications of evaluation results, such as a Licensed Specialist in School Psychology (LSSP) or an Educational Diagnostician.
- at the discretion of the parent, guardian or the District, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate; and
- whenever appropriate, the student.

³ 19 TEX. ADMIN. CODE § 89.1050(a)

⁴ 34 CFR § 300.321 (a); 19 TEX. ADMIN. CODE § 89.1050(c)

⁵ 34 C.F.R. § 300.327

⁶ U.S. Dept. of Education, 71 Fed. Reg. 46669 (August 14, 2006) (“[i]t would be inappropriate to require that individuals with specific professional knowledge or qualifications attend all IEP Team meetings. These decisions should be made on a case-by-case basis in light of the needs of a particular child”).

⁷ U.S. Dept. of Education, 71 Fed. Reg. 46669 (August 14, 2006)

⁸ U.S. Dept. of Education, 71 Fed. Reg. 46670 (August 14, 2006)

The ARD committee shall also include the following additional participants, as appropriate:

- with the consent of a parent, guardian or a student who has reached the age of majority, a representative of any participating agency likely to be responsible for providing or paying for transition services. The campus special education case manager (special education teacher) to the extent practicable under the circumstances, shall document efforts to obtain parental consent for the participation of an individual from the Texas Workforce Commission prior to or at the beginning of a student's ARD committee meeting wherein transition services will be discussed;
- a representative from the District's Career and Technical Education (CTE) when the student's ARD committee is considering placement of a student in CTE;
- if the student is identified as an English Language Learner, a professional staff member who is on the District's Language Proficiency Assessment Committee in accordance with South Texas ISD's Policy [EHBE\(Legal\)](#);
- if the student is a student with a suspected or documented visual impairment, a teacher who is certified in the education of students with visual impairments;
- if the student is a student with a suspected or documented auditory impairment, the student's Teacher of the Deaf and Hard of Hearing; and
- if the student is a student with suspected or documented deaf-blindness, a teacher who is certified in the education of students with visual impairments and a teacher who is certified in the education of students with auditory impairments.⁹

Required members must be present for the ARD committee meeting unless properly excused by the parent or guardian and the District. IDEA requires different procedures for different types of excusals, including differentiating between circumstances in which parental consent is required and when an agreement is required to excuse a mandatory ARD committee member from attending an ARD committee meeting. Therefore, South Texas ISD has different procedures in place for the different types of excusals.¹⁰ The two types of excusals triggering the excusal requirements are: (1) when a required ARD committee member's area of the curriculum or expertise is not being modified or discussed; and (2) when a required ARD committee member's area of the curriculum or expertise is being modified or discussed.

With the first type of excusal, parent or guardian and South Texas ISD agreement is required; however, South Texas ISD is given wide latitude about the content of the agreement to excuse a

⁹ *Id.*

¹⁰ US Department of Education, 71 Fed. Reg. 46673 (August 14, 2006)

required ARD committee member from the meeting.¹¹ With the second type of excusal, parent or guardian consent is also required, and the member must submit in writing, to the parent or guardian and the ARD committee, input into the development of the IEP prior to the meeting. When consent is required, the ARD Chair will ensure that all of the IDEA consent requirements are satisfied, including by providing the parent or guardian with appropriate and sufficient information to ensure that the parent or guardian fully understands that the parent or guardian is consenting to excuse an ARD committee member from attending an ARD meeting in which the member's area of the curriculum or expertise is being changed or discussed. The parent or guardian must also be informed that if the parent does not consent, the ARD committee meeting must be held with that ARD committee member in attendance.¹² The ARD Chair shall document all ARD committee meeting participants, including any member who is excused prior to or during the meeting, and shall verify that the excusal procedures have been followed.

PRACTICE GUIDE—If a parent brings an attorney to an ARD committee meeting without notice to the District, the ARD committee may reschedule the ARD committee meeting to a time and date that the District's counsel may attend the meeting in-person or by virtual means.

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South Texas ISD reserves the right to audio/video record any and all ARD Committee meetings. The recording made by the District shall be the official recording of said meeting. A parent/guardian may request a copy of the audio/video recording after a meeting has been concluded.

Within 30 calendar days from the date of the completion of the student's initial special education evaluation report, the student's ARD committee shall make its decisions regarding the student's initial eligibility, and, if appropriate, her or his individualized education program (IEP) and placement.¹⁴

At a duly constituted ARD committee meeting *that is conducted after at least 5 school days-notice to the student's parent or guardian*, the student's ARD committee, including the student's parent or guardian, shall develop an IEP, consistent with **FAPE: Section 3.3** below, by considering—¹⁵

- the student's strengths; the concerns of the parents or guardians for enhancing the education of the student; the results of the student's initial or most recent

¹¹ *Id.*

¹² *Id.*

¹³ OSEP's [Letter to Andel](#) (February 17, 2016) (“[i]t would be permissible for the public agency to reschedule the meeting to another date and time if the parent agrees so long as the postponement does not result in a delay or denial of a free appropriate public education to the child”).

¹⁴ 19 TEX. ADMIN. CODE § 89.1011(d)

¹⁵ 34 C.F.R. § 300.324(a)-(b)

evaluation; and the present academic, developmental, and functional needs of the student;

- in the case of student whose behavior impedes the student's learning or that of others, the use of positive behavioral interventions and supports, and other strategies to address that behavior;
- the language needs of a student with limited English proficiency as those needs relate to the student's IEP;
- providing for instruction in Braille and the use of Braille unless the ARD committee determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille), consistent with **EVALUATIONS: Section 2.0** above, that instruction in Braille or the use of Braille is not appropriate for the student;
- the communication needs of the student, including, for a student who is deaf or hard of hearing, the student's opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode; and
- the student's need for assistive technology devices and services.

3.3 *What is in a student's IEP?*

- **Parent and Student Concerns.**¹⁶ The ARD Chair shall ensure that the ARD committee elicits, considers and documents the concerns of the parent or guardian for enhancing the education of her or his child. This may be reflected in a concise statement summarizing the educational, social, behavioral and/or emotional concerns of the parent or guardian and student, as appropriate.
- **Student Strengths and Relevant Evaluation Results.**¹⁷ The ARD Chair shall ensure that the student's IEP identifies the assessment data considered by the ARD committee, including both state and District-wide assessment results, as well as relevant information from any campus. Privately obtained assessments provided by the student's parent or guardian shall be considered in any decision made with respect to the provision of FAPE to the student if it meets District criteria.¹⁸ To the extent appropriate, the student's general education performance shall also be documented. This summary shall also include

¹⁶ 34 C.F.R. § 300.324(a)(1)(ii)

¹⁷ 34 C.F.R. § 300.324(a)(1)(i), (iii)

¹⁸ 34 CFR § 300.502(c)(1)

an explanation of how the student's disability or disabilities impact the student's progress and participation in the general education curriculum.¹⁹

PRACTICE GUIDE—Designated staff may follow up with the student's teachers to ensure that appropriate data will be prepared for the ARD Committee's consideration. The ARD Committee will ensure District evaluations are current. When a parent provides the District with a copy of a privately obtained evaluation, the designed staff member should prepare a consent for the release of confidential information form for the parent to sign.

- **Present Levels of Academic Achievement and Functional Performance (PLAAFP).**²⁰ The Special Education Case Manager shall coordinate with the student's relevant ARD committee members, general and special education teachers, and/or related service providers, to ensure, through their preparation and participation in the ARD committee meeting and through the participation of the parent or guardian, that the student's IEP contains an accurate description of how the student is performing in the areas of educational and functional need. The statement of present levels in a student's IEP should convey sufficient information to provide clear levels of the student's current academic and functional performance.

PRACTICE GUIDE—Designated staff should inform teachers to bring appropriate data to support the development of the student's PLAAFP statements; current assessments should be considered and reviewed as appropriate, including but not limited to behavioral and academic data, such as benchmark assessments, teacher made tests, or other classroom based assessments. Teachers should also be encouraged to bring information and data describing how the student's disability impacts their functional performance in the areas of the curriculum. For example, in the area of reading, a teacher may make note of whether a student tracks text from left to right or holds reading material correctly.

- **Measurable Annual Goals.** The ARD Chair shall ensure that a student's IEP, as developed by the ARD committee includes:
 - a statement of measurable annual goals, including academic and functional goals.

¹⁹ U.S. Dept. of Education, 71 Fed. Reg. 46577 (August 14, 2006) ("§ 300.320(a)(2)(i) requires annual IEP goals to be designed to enable the child to be involved in and make progress in the general education curriculum")

²⁰ 34 CFR § 300.320(a); 34 C.F.R. § 300.324(a)(1)(iv).

- goals designed to meet the student's needs that result from the student's disability to enable the student to be involved and make progress in the general education curriculum, and to meet each of the student's other educational needs that result from the student's disability.
- for students who take alternate assessment aligned to alternate achievement standards, a description of benchmarks²¹ and short-term objectives.²²

PRACTICE GUIDE—The ARD committee may include goals, as appropriate, in any academic and nonacademic skills deficit area or areas of educational need identified by the student's ARD committee as part of a student's initial evaluation or any subsequent reevaluation. The ARD committee may ensure individualization by avoiding requiring all students with disabilities to master every TEK. Rather, the ARD committee may look to the evaluation and analyze how the student's disability impacts the student's rate of progress so that appropriately challenging goals may be developed. To help ensure the measurability of annual goals, the student's objectives and benchmarks may describe target behavior, conditions, and outcomes, as well as address the data collection strategy for measuring and documenting progress. The ARD committee may document the ARD committee's consideration of the services from the prior school year and the progress on the prior annual goals, objectives, and benchmarks when developing the student's current measurable annual goals, and consider and document the unique circumstances of the student's disability and past rate of progress when crafting the student's current IEP to develop appropriately challenging goals and objectives.

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- **Supplementary Aids and Services.** The ARD Chair shall ensure that the student's IEP, as developed by the ARD committee, includes a statement of needed supplementary aids and services (aids, services, and other supports) in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable the student to be educated with non-disabled students to the maximum extent appropriate.²⁴

As part of supplementary aids and services, the IEP may include a list or a chart of all accommodations, behavioral or academic, determined by the student's ARD

²¹ Tex. Ed. Code § 39.0263

²² 34 C.F.R. § 300.320

²³ *E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754 (5th Cir. 2018).

²⁴ 34 C.F.R. § 300.42; 34 C.F.R. § 300.320

committee to be appropriate to meet the educational needs of the student in the general education setting.

PRACTICE GUIDE—In addition to the FIE, the ARD committee may reference assessment data which could include classroom observations to support the educational need for these services, as appropriate, and consider any relevant peer reviewed research as appropriate.

- **Behavioral Supports and Interventions.**²⁵ In the case of a student with a disability whose behavior impedes the student’s own learning or that of others, the ARD Chair shall ensure that the student’s ARD committee considers the use of positive behavioral interventions and supports, and other strategies, to address that behavior, and includes as part of the IEP any needed interventions, supports and strategies.²⁶ The student’s ARD committee may determine that a behavior improvement plan or a behavioral intervention plan (BIP) is appropriate for a student. In such instances, the ARD committee determines the appropriate components of a BIP for the student’s individual needs; there are no formal requirements for a BIP.²⁷ If the student’s ARD committee determines that a BIP is appropriate, the BIP shall be included as part of the student’s IEP and provided to each responsible teacher.²⁸ Students will be subject to the Student Code of Conduct (SCOC) consistent with students without disabilities, provided that any discipline under the SCOC shall be subject to the timelines and protections provided to a student with a disability under the IDEA, including holding an ARD Committee (MDR) meeting in connection with any “disciplinary change of placement” in accordance with the District’s [FOF\(Legal\)](#) policy.
- **Specially Designed Instruction.**²⁹ The ARD Chair shall ensure that the student’s IEP as developed by the ARD committee includes a statement of needed special education services. Special education means “specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.”³⁰ Specially designed instruction means—
 - “adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction-
 - To address the unique needs of the child that result from the child's disability; and

²⁵ 34 C.F.R. § 300.324(a)(2)(i)

²⁶ 34 C.F.R. § 300.324(a)(2)(i)

²⁷ *Alex R. v. Forestville Valley Community Unit School District*, 375 F.3d 603 (7th Cir. 2004)

²⁸ Tex. Ed. Code § 29.005(g)

²⁹ 34 CFR § 300.320; 34 C.F.R. § 300.38(b)(3)

³⁰ 34 C.F.R. §300.39(a)(1)

- To ensure access of the child to *the general curriculum*, so that the child can meet *the educational standards within the jurisdiction of the public agency that apply to all children.*³¹

The general curriculum and educational standards that “apply to all children” in South Texas ISD are the [Texas Essential Knowledge and Skills \(TEKS\)](#) as well as the District’s Policy **EIE(Local)**.³² The state-wide assessments that determine a student’s progress toward meeting those educational standards are the [State of Texas Assessments of Academic Readiness \(STAAR\)](#).

When developing specifically designed instruction, the student’s ARD committee shall consider—

- How content, methodology and delivery of instruction will be modified from the general curriculum.
- Student performance criteria that accurately and appropriately evidences the modification of the content of the performance or assessment.
- **Program Modifications and Supports for School Personnel.** The ARD Chair shall ensure that the student’s IEP as developed by the ARD committee includes a statement of any needed program modifications or supports for campus and other District personnel that will be provided to enable the student: to advance appropriately toward attaining the annual goals in the student’s IEP; to be involved in and make progress in the general education curriculum; to participate in extracurricular and other nonacademic activities³³; and to be educated and participate with other students with disabilities and non-disabled students.³⁴

PRACTICE GUIDE—The District may identify a person knowledgeable about specialized resources or trainings available for teachers to assist with this provision.

- **Related Services.** The ARD Chair shall ensure that the student’s IEP as developed by the ARD committee includes any needed related services and the projected date for the beginning of the student’s related services, together with the anticipated frequency, location and duration of the student’s related services. Related services means transportation and such developmental, corrective, and other supportive services *as are required* to assist a student with a disability to benefit from special education, and includes: speech-language pathology and audiology services;

³¹ 34 C.F.R. §300.39(b)(3)(emphasis added)

³² The educational standards applicable to all children in the state of Texas are also outlined in Tex. Ed. Code § 28.002 and in 19 TEX. ADMIN. CODE § 74.1.

³³ 34 CFR § 300.320(a)(4)(iii).

³⁴ 34 CFR § 300.320

interpreting services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling; orientation and mobility services; and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.³⁵ The ARD Chair shall further ensure that the IEP developed by the ARD committee includes sufficient information about the amount and type of services, so that it is clear to the parent, as well as to the student's related service providers and teachers, what level of support the student is to receive.³⁶

- **Consideration of Strategies for Students with Autism.** The ARD Chair will ensure that for a student eligible for special education and related services as a student with Autism, the student's ARD committee considers the eleven strategies as described in the District's AUTISM IEP SUPPLEMENT, and includes as part of the IEP any strategies deemed necessary and appropriate for the student.³⁷ Those strategies deemed necessary and appropriate for the student may be incorporated throughout the IEP and/or described in a supplement.
- **Transition Services.** Beginning not later than the first IEP to be in effect when a student turns 14 and then updated annually, the ARD Chair shall ensure that the student's IEP as developed by the student's ARD committee includes:
 - appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
 - the transition services (including courses of study) needed to assist the student in reaching those goals.³⁸

The ARD Chair shall further ensure that the student's ARD committee complies with South Texas ISD's [Policy EHBAD\(Legal\)](#) ("Special Education Transition Services") regarding the procedures for including representatives from the [Texas Workforce Commission](#) on a student's ARD committee.

- **State and District-wide Assessment.** The ARD Chair shall ensure that the student's IEP as developed by the ARD committee includes a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on State and District-wide assessments. The ARD Committee will follow TEA guidelines when determining how a student will participate in the Texas Statewide Assessment Program, including how to select allowable accommodations, and in deciding whether a

³⁵ 34 C.F.R. § 300.34(a)

³⁶ U.S. Department of Education, 71 Fed. Reg. 46667(2006)

³⁷ 19 TEX. ADMIN. CODE § 89.1055(h)

³⁸ 34 CFR § 300.320(b)(1); U.S. Department of Education, 71 Fed. Reg. 46668 (2006)

student with a disability meets the criteria to be assessed based on modified or alternate academic achievement standards. If the ARD committee determines that the student must take an alternate assessment instead of a particular regular State or district wide assessment of student achievement, ARD Chair shall ensure as appropriate that the student's IEP as developed by the ARD committee includes a statement of why the student cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the student.

- **Placement in the Least Restrictive Environment and the Justification for any Removal from General Education.** Please see: **FAPE: Section 3.5.**
- **Extended School Year (ESY) Services.** Whenever appropriate, the student's ARD committee shall determine whether the student requires an extended school year based on a regression-recoupment analysis. The need for ESY services shall be documented from formal and/or informal evaluations provided by the District or the student's parents or guardians. The documentation must demonstrate that in one or more critical areas addressed in the student's current IEP goals and objectives, the student has exhibited, or reasonably may be expected to exhibit, severe or substantial regression that cannot be recouped within a reasonable period of time. Severe or substantial regression means that the student has been, or will be, unable to maintain one or more acquired critical skills in the absence of ESY services.³⁹ It is important to remember that ARD committee determinations regarding ESY services are prospective in nature and not intended to make up for past denials of FAPE, if any.⁴⁰

PRACTICE GUIDE—Designated special education staff may coordinate with the student's teacher(s) regarding collection of data regarding regression and recoupment at appropriate intervals.

- **Response to Bullying or Harassment.** Following an investigation of a student with a disability who is an alleged victim or perpetrator of bullying or harassment in violation of the District's **FFH(Local)** and **FFI(Local)** policies, an ARD committee meeting shall be held to review the conduct and to consider the impact, if any, of the bullying conduct on the provision of FAPE to the student.⁴¹ The District will provide notice of an ARD committee meeting in collaboration with the Campus Administrator.

³⁹ 19 TEX. ADMIN. CODE § 89.1065 ; *Alamo Heights ISD v. State Board of Ed.*, 790 F2d. 1153 (5th Cir. 1986)(severe or substantial regression required for ESY).

⁴⁰ OSEP. [Part B Implementation of IDEA Provision of Services in the Current COVID-19 Environment Q&A Document](#). September 28, 2020.

⁴¹ Tex. Ed. Code § 37.001(b-1)

PRACTICE GUIDE—Draft IEPs may be prepared prior to the ARD committee meeting at the discretion of the District. However, if the District elects to prepare a draft IEP prior to an ARD committee meeting including in response to a parent’s written request for a draft, the District or designee shall clarify to the parent or guardian at the start of the ARD committee meeting and in any written correspondence with the parent providing the proposed draft IEP, that the draft IEP is the District’s preliminary recommendations for review and revision with the parent at the ARD meeting. The District’s decision to prepare or to decline to prepare a draft IEP at a parent’s request is an administrative decision at the discretion of the District.

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3.4 *How does the District use Prior Written Notice (PWN) to inform parents about the decisions of a student’s ARD committee?*

Prior Written Notice (PWN) ⁴³ shall include the following—

- A description of the action proposed or refused by the District.
- An explanation of why the District proposes or refuses to take an action.
- A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action.
- A statement that the parents of a student with a disability have protection under [TEA’s Notice of Procedural Safeguards](#).
- Sources for parents to contact to obtain assistance in understanding the provisions of a Prior Written Notice, such as the [Region Education Service Center](#) or [TEA](#).
- A description of other options that the ARD committee considered and the reasons why those options were rejected.
- A description of other factors that are relevant to the District’s proposal or refusal.

Minutes or Deliberations. The written statement of an IEP shall document the decisions of the student’s ARD committee with respect to issues discussed at each ARD committee meeting or IEP Amendment. While deliberations are not required, the ARD Chair shall ensure that the documents from an ARD committee meeting and the written statement of an IEP include the date of the meeting; the name, position, and signature of each member participating in the meeting; and an

⁴² US Department of Education, 71 Fed. Reg. 46678 (2006)(“[w]e do not encourage public agencies to prepare a draft IEP prior to the IEP Team meeting, particularly if doing so would inhibit a full discussion of the child's needs. However, if a public agency develops a draft IEP prior to the IEP Team meetings, the agency should make it clear to the parents at the outset of the meeting that the services proposed by the agency are preliminary recommendations for review and discussion with the parents”; *White ex rel. White v. Ascension Parish School Board*, 343 F.3d 373 (5th Cir. 2003).

⁴³ 34 C.F.R. § 300.503(b)

indication of whether the student's parents or guardians, the adult student, if applicable, and the administrator agreed or disagreed with the decisions of the committee.⁴⁴

- **Documentation of the decisions of the student's ARD committee** may be done through preparation of ARD committee meeting deliberations or minutes. Prior Written Notice (PWN) shall be issued after each ARD committee meeting. A completed PWN would satisfy the District's obligation to document the decisions of a student's ARD committee. South Texas ISD may use the IEP and the deliberations or minutes as part of the PWN so long as the document(s) the parent or guardian receives meet all the requirements of prior written notice.⁴⁵ The deliberations and/or the Prior Written Notice may be used to establish how the District is providing a FAPE to a student and collaborating with a parent or to document other factors relevant to a student's IEP.

PRACTICE GUIDE—When preparing the documents from the ARD committee meeting, the District collaborates with parents concerning the form and content of these documents; however, final decisions concerning the form and content of written documents is an administrative decision within the discretion of the District. There is no requirement to read the minutes aloud at the end of an ARD committee meeting or to project the documents at issue on a screen. If there is a dispute about the contents, the District may attach a *Parent Addendum* to the student's IEP. The *Parent Addendum* would not be binding on the District or the student's ARD committee; however, the *Parent Addendum* would become part of the student's educational records maintained by the District.

- IDEA does not require that the District include additional information in a student's IEP beyond what is expressly required under 20 USC § 1414; 34 CFR § 300.320 (d)(1). By way of example and not limitation, a student's IEP does not need to include—
 - The identity of specific teachers or specific educational methodology.⁴⁶
 - Extracurricular activities unrelated to the student's IEP.⁴⁷
 - Services that are unrelated to the student's special education program.⁴⁸

⁴⁴ Tex. Ed. Code § 29.005(b-1)

⁴⁵ U.S. Department of Education, 71 Fed. Reg. 46691 (August 14, 2006)

⁴⁶ *Letter to Hall*, 21 IDELR 58 (OSERS 1994).

⁴⁷ *Letter to Anonymous*, 17 IDELR 180 (OSEP 1990).

⁴⁸ *Letter to Montano*, 18 IDELR 1232 (OSEP 1992).

3.5 *How does a student's ARD committee make a placement decision?*⁴⁹

To the maximum extent appropriate, students with disabilities must be educated with students who are nondisabled, and special classes, separate schooling, or other removal of students with disabilities from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes, with the use of supplementary aids and services, cannot be achieved satisfactorily.⁵⁰ Once a student's IEP is fully developed, the ARD Chair shall ensure that the student's ARD committee considers, and the student's IEP documents, a placement determination based upon the individual needs of the particular student and the appropriate and least restrictive educational environment in which the IEP can be implemented. When making a placement decision, the ARD Chair shall ensure that the ARD committee considers a continuum of alternative placements.

PRACTICE GUIDE—Location of a particular classroom or program is an administrative decision not within the purview of an ARD committee. Location is different from the determination of an individual student's special education placement. The location of classrooms and programs is an administrative decision within the discretion of the District. School district administration may centralize the location of certain programs to efficiently use the District's resources in the service of students with disabilities.

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What does it mean to have a continuum of placement options for students? The District shall make available a continuum of alternative placements listed in the definition of special education under 34 C.F.R. § 300.38 (e.g., instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions), and make provision for supplementary services to be provided in conjunction with placement in the general education setting to facilitate such placement.⁵² The IEP, evaluations and other relevant data guide the ARD committee in making placement decisions.

PRACTICE GUIDE—The ARD committee may determine that additional evaluations, updated assessment or other information are needed to make a placement decision. Consider having the student's evaluation team review the continuum of placements within the District for potential recommendations to the student's ARD committee, as appropriate. The student's ARD committee shall ensure that the student is not removed from education in age-appropriate general education classrooms solely because of needed modifications in the general curriculum.

⁴⁹ *A.B. v. Clear Creek ISD*, 75 IDELR, 787 F.App'x 217 (5th Cir. 2019); *Daniel RR v. State Bd. of Ed.*, 874 F.2d 1036 (5th Cir. 1989); *J.H. v. Fort Bend Indep. Sch. Dist.*, 482 Fed. Appx. 915 (5th Cir. 2012)

⁵⁰ 34 CFR § 300.114 (a)

⁵¹ *White ex rel. White v. Ascension Parish School Board*, 343 F.3d 373 (5th Cir. 2003).

⁵² 34 C.F.R. § 300.115(b); 34 C.F.R. § 300.115(b); 19 TEX. ADMIN CODE §89.63

Before moving a student to a more restrictive environment⁵³, the student's ARD committee shall consider ---

- Has the District taken steps to accommodate the student with disabilities in general education?
- Were these efforts sufficient or token?
- Will the student receive an educational benefit from general education?
- What will be the student's overall educational experience be in the general education environment, balancing the benefits of general and special education?
- What effect does the student's presence have on the general education classroom environment? ⁵⁴

PRACTICE GUIDE—The ARD committee will take steps to accommodate the student in general education and may document attempted services and accommodations. The District is not required to provide every conceivable aid or service to assist the student. General education instructors are not required to devote all or most of their time to one student or to modify the general education program beyond recognition. Data may be collected to determine the student's overall educational experience in the general education environment. Should the student's presence be so disruptive in the general education classroom that the education of other students is significantly impaired, then the needs of the student with a disability cannot be met in that environment.

Residential Treatment Centers (RTCs) or private residential programs are included in the continuum of placements.⁵⁵ The District is not required to place a student in a private residential program unless such placement is necessary to provide special education and related services. In order for a residential placement to be appropriate under the IDEA, the placement must be (1) essential in order for the student to receive a meaningful educational benefit, and (2) primarily oriented toward enabling the student to obtain an education. The District is not required to bear the costs of private residential services that are primarily aimed at treating a student's medical difficulties or enabling the student to participate in non-educational activities.^{56 57}

⁵³ 34 C.F.R. § 300.116(e)

⁵⁴ *Daniel RR v. State Bd. of Ed.*, 874 F.2d 1036 (5th Cir. 1989)

⁵⁵ 34 C.F.R. § 300.115

⁵⁶ *Richardson ISD v. Michael Z*, 580 F.3d 286 (5th Cir. 2009); 34 C.F.R. § 300.104

⁵⁷ Tex. Ed. Code § 29.008; Tex. Ed. Code § 29.012; 19 TEX. ADMIN. CODE § 89.61; [TEA's Residential Treatment Center \(RTC\) application process](#); 34 C.F.R. § 300.325(a)

PRACTICE GUIDE—The student’s ARD committee will follow and ensure the criteria are met for any residential educational placement for a student with disabilities at the onset of any consideration for such a placement. Before a student’s ARD committee places a student in a Residential Treatment Center, the District must initiate and conduct a meeting to develop an IEP placing the student at the private residential setting. A designee of the ARD committee will ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the District will use other methods to ensure participation by the private school or facility, including individual or conference telephone calls. Initiating the RTC placement process with TEA is among the steps for ensuring the availability of RTC as option for an ARD committee’s consideration. The Director of Special Education or designee may visit the proposed facility prior to any final decisions regarding placement and complete the RTC placement application process as an administrative action to verify whether placement in an RTC is a viable option considering the student’s individual circumstances.

3.6 How does the District respond to a parent or guardian’s request for private placement when there is a disagreement regarding FAPE?

If the parents or guardians of a student with a disability, who previously attended the District, enroll the student in a private preschool, elementary school, or secondary school without the consent of or referral by the District, a court or a hearing officer may require the District to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the District had not made FAPE available to the student in a timely manner prior to that enrollment, and that the private placement is appropriate. The cost of reimbursement may be reduced or denied:

- if, at the most recent ARD committee meeting that the parents or guardians attended prior to removal of the student from the District, the parents or guardian did not inform the ARD committee that they were rejecting the placement proposed by the District to provide FAPE to the student, including stating their concerns and their intent to enroll the student in a private school at public expense;
- if, at least 10 District business days (including any holidays that occur on a business day) prior to the removal of the student from the District, the parents or guardians did not give written notice to the District that they were withdrawing the student and seeking reimbursement from the District for the cost of the private school placement;
- if, prior to the parents or guardians' removal of the student from the District, the District informed the parents or guardians, through the notice requirements described in these Operating Procedures, of its intent to evaluate the student

(including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the student available for the evaluation; or

- if a hearing officer or judge finds that the parents acted unreasonably.⁵⁸

PRACTICE GUIDE—The student's campus special education staff may consider the need to conduct a District evaluation; schedule an ARD committee meeting to consider revisions to the student's IEP to address the parents' concerns and ensure the availability of FAPE to the student; request information from the student's private school, and request from the parents any privately obtained evaluations.

3.7 *What happens if an ARD committee meeting ends in disagreement?*

All members of the student's ARD committee shall have the opportunity to participate in a collaborative manner when developing the student's IEP.⁵⁹ A decision of the ARD committee concerning the required elements of the student's IEP should be made by mutual agreement, if possible. No decision is made by majority vote. If a student's ARD committee cannot reach consensus, the ARD Chair shall provide the parents with Prior Written Notice of the ARD committee's proposals and/or refusals and the basis of the disagreement.

When mutual agreement about all required elements of the IEP is not achieved, the parent who disagrees shall be offered a **single opportunity** to recess and reconvene the ARD committee meeting. The period of time for reconvening the ARD committee meeting shall not exceed 10 school days, unless the parties mutually agree otherwise. The ARD committee shall schedule the reconvened meeting at a mutually agreed upon time and place.⁶⁰

PRACTICE GUIDE—The ARD committee can recess a meeting for reasons other than disagreement. There is no mandate on time to return when the parties table for reasons other than reaching agreement on FAPE.

During the recess, the student's ARD committee members⁶¹ shall consider alternatives for any disputed educational programming, gather additional data, prepare further documentation, and/or obtain additional resource persons who may assist in enabling the ARD committee to reach mutual agreement, if possible.⁶² The 10-day recess is not required when the student's presence on the

⁵⁸ *School Comm. of Burlington v. Department of Educ. of Mass.*, 471 U.S. 359, 369 (1985); *see also*, 34 C.F.R. 300.148(c); *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 129 S. Ct. 2484, 2496 (2009)

⁵⁹ 19 TEX. ADMIN. CODE § 89.1050(g)

⁶⁰ 19 TEX. ADMIN. CODE § 89.1050(g)(1)

⁶¹ 19 TEX. ADMIN. CODE § 89.1050(g)(2)

⁶² *Id.*

campus presents a danger of physical harm to the student or others or when the student has a committed an expellable offense or an offense that may lead to placement in a DAEP.⁶³

PRACTICE GUIDE—The ARD committee may consider obtaining additional evaluation, retaining a consultant in an area of disagreement; offer the parent an opportunity to visit classrooms at issue; consider whether the issue of dispute could better be resolved administratively, such as personnel-related issues; consider training options; consider ARD facilitation and/or mediation to reach consensus; and ensure effective collaboration by reviewing rules of decorum and expectations for participation.

When mutual agreement is not reached, the ARD Chair shall ensure that a written statement of the basis for the disagreement is thoroughly documented. Following Prior Written Notice, the District will implement the IEP that it has determined to be appropriate for the student.⁶⁴

PRACTICE GUIDE—The ARD committee does not have to secure parent agreement to implement the IEP with which the parent disagrees. The designated staff member will provide Prior Written Notice 5 school days prior to implementation; consider whether mediation or ARD facilitation is appropriate; and provide the parent with a copy of *TEA's Notice of Procedural Safeguards* (consider also—*TEA's Parent's Guide to the Admission, Review and Dismissal Process*). The ARD committee shall also offer the parent, who disagrees with the IEP implemented by the District, the option of writing a statement of disagreement.

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3.8 *When and how is a student's IEP updated?*

In making changes to a student's IEP after the annual ARD committee meeting for a school year, a parent or guardian and the District may agree not to convene an ARD committee meeting for the purpose of making those changes, and instead may develop a written document to amend or modify the student's current IEP without a meeting. If changes are made to the student's IEP by IEP Amendment without a meeting, the ARD Chair shall ensure that the student's ARD committee and the individuals responsible for the implementation of the student's IEP are informed of those changes. The Special Education Case Manager will provide the parent or guardian with Prior

⁶³ 19 TEX. ADMIN. CODE § 89.1050(g)(1)

⁶⁴ 19 TEX. ADMIN. CODE § 89.1050(g)(3)

⁶⁵ 19 TEX. ADMIN. CODE § 89.1050(g)(4) ; [TEA's Notice of Procedural Safeguards](#); [Parent's Guide to the Admission, Review and Dismissal Process](#)

Written Notice of the amendments to the IEP.⁶⁶ Upon request, a parent or guardian shall be provided with a revised copy of the IEP with the amendments incorporated.⁶⁷

PRACTICE GUIDE—The District may consider using the IEP Amendment process to address changes to goals and objectives, accommodations, and supplementary aids and service. Whenever the District proposes to amend an IEP without a meeting, the District should ensure that the parent understands that the parent can choose not to agree, and instead have an IEP Team meeting. Changes in placement and manifestation determination reviews cannot be addressed via an IEP Amendment.

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The student's ARD committee shall review and revise the student's IEP as follows:

- to periodically, but not less than annually, to determine whether the annual goals for the student are being achieved;
- to address any lack of expected progress toward the annual goals in IEP and in the general education curriculum, if appropriate;
- to review the results of any reevaluation of the student or any information about the student provided to, or by, the parents or guardians, relevant to the student's program of special education and related services; and
- to consider the student's anticipated needs and other matters, as appropriate.⁶⁹

3.9 How does the District ensure parents or guardians are included in the IEP development process?

Each ARD committee shall endeavor to ensure that a student's parent or guardian is included in the process of developing a student's IEP.⁷⁰

⁶⁶ OSERS, [*Questions and Answers on Individualized Education Programs \(IEPs\), Evaluations, and Reevaluations*](#). Revised September 2011.

⁶⁷ 34 C.F.R. § 300.324(a)(6)

⁶⁸ US Department of Education, 71 Fed. Reg. 46685 (August 14, 2006).

⁶⁹ 34 C.F.R. § 300.324

⁷⁰ *Buser v. Corpus Christi Indep. Sch. Dist.*, 51 F.3d 490 (5th Cir. 1995); *White v. Ascension Parish*, 343 F.3d 373 (5th Cir. 2013) (IDEA requirements with respect to parental input are met "[a]bsent any evidence of bad faith exclusion of the parents or refusal to listen to or consider" parental input); 19 TEX. ADMIN. CODE § 89.1050(e); 34 C.F.R. § 300.503.

PRACTICE GUIDE—To facilitate collaboration, ARD committees are encouraged to create an atmosphere where parents are free to ask questions and share ideas during ARD committee meetings and to collaborate with parents as key stakeholders in the placement of students with disabilities.

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Each student's special education case manager shall—

- **Provide parents or guardians notice of all ARD committee meetings no later than 5 school days prior to each meeting** (unless the parents or guardians agree to a shorter timeframe).⁷² In addition to the date and time of the meeting, each meeting notice shall include a list of all meeting participants known at the time the notice is provided to the parent or guardian; a brief description of the purpose of the meeting; and the mode of participation (e.g., in-person or via tele- or video conferencing). A meeting for which parental notice is required does not include informal or unscheduled conversations involving District personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that District personnel engage in to develop a proposal or response to a parent or guardian proposal that will be discussed at a later ARD committee meeting.⁷³
- **Schedule ARD committee meetings with parents or guardians at a mutually agreed time and place.**⁷⁴
- **Document all efforts to schedule an ARD committee meeting with parents or guardians.** If no parent or guardian can participate in an ARD committee meeting, the Special Education Case Manager shall offer a parent or guardian the opportunity to participate in the meeting by tele- or video conferencing or other virtual means. The District may convene an ARD committee meeting without the involvement of a parent or guardian if the Special Education Case Manager is unable to convince the parents or guardians that they should attend. *Document and keep a record of attempts to arrange a mutually agreed upon time and place for the ARD committee meeting.*⁷⁵ These attempts may include—

⁷¹ *Rockwall ISD v. M.C.*, 816 F.3d 329 (5th Cir. 2016); *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir.1997).

⁷² 19 TEX. ADMIN. CODE § 89.1050(d)

⁷³ 34 C.F.R. § 300.501(b)(3)

⁷⁴ 34 C.F.R. § 300.322(a)(2)

⁷⁵ 34 C.F.R. § 300.501(c)

- Detailed records of telephone calls made or attempted and the results of those calls.
- Copies of correspondence or e-mails sent to the parents or guardians and any responses received.
- Detailed records of visits made to the parent or guardian's home or place of employment and the results of those visits.⁷⁶

PRACTICE GUIDE—When the ARD committee provides the parent a copy of the IEP and Prior Written Notice generated from the meeting the parent did not attend, the ARD committee may offer to schedule another ARD committee meeting to review the ARD committee's decisions with the non-attending parent. The District's correspondence may note that the District welcomes and encourages parental participation.

- **Ensure and document receipt by the parent or guardian of a copy of the procedural safeguards notice** at least once a year, and also -⁷⁷
 - Upon initial referral or parental request for evaluation.⁷⁸
 - Upon the first occurrence of the filing of a due process hearing complaint.
 - Following any disciplinary action requiring a manifestation determination review.⁷⁹
 - As soon as practicable after the student is referred to determine the student's eligibility for admission into special education.
 - At any other time on reasonable request of the student's parent or guardian.⁸⁰
- **Ensure that any education records, as defined by the District's FL(LOCAL) policy, requested by a parent or guardian of a student with a disability may be inspected and reviewed** by a parent or guardian or the parent

⁷⁶ 34 CFR § 300.322(d)

or guardian's representative (with informed written consent of the parent or guardian)—

- Before any ARD committee meeting.
- Before any mediation session or resolution session that is part of a special education due process hearing request.
- Without unnecessary delay but in no case more than 45 days.⁸¹

Copies of educational records may be provided in accordance with the District's [FL\(LOCAL\)](#) policy. Fees may be charged for those copies so long as the fee does not effectively prevent the parent or guardian from exercising their right to inspect and review the requested records.⁸²

PRACTICE GUIDE—Unless the student's parent is entitled to an audio recording of a student's ARD committee meeting as outlined in CHILD FIND: Section 1.5, the District does not regularly record ARD committee meetings and does not maintain recordings of ARD committee meetings or other special education related meeting audio recordings as educational records in accordance with the *Family Educational Rights and Privacy Act* (FERPA). If a parent elects to record an ARD committee meeting, the parent must (1) inform the members of the ARD committee at the start of the ARD committee meeting that she or he is recording the meeting, and (2) upon request, provide the District with an unredacted copy of the audio recording. Each parent who records an ARD committee meeting in accordance with this procedure assumes responsibility for the audio recording and any claims or issues related thereto. The District reserves the option, at its discretion, to record an ARD committee meeting for administrative purposes. If the District does make an audio recording of an ARD committee meeting, upon request, the District will provide the parent with an unredacted copy of the audio recording. The District does not allow video recordings of meetings.

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If a parent or guardian makes a written request for an ARD committee meeting, the District shall schedule the meeting as soon as appropriate under the circumstances, or within 5 school days provide a brief written explanation of why the District refuses to schedule the requested ARD

⁸¹ 34 C.F.R. § 300.613

⁸² 34 C.F.R. § 300.617 (The District may not charge a fee to search for or to retrieve the educational records.)

⁸³ "IDEA does not address the use of audio or video recording devices at IEP meetings, and no other Federal statute either authorizes or prohibits the recording of an IEP meeting by either a parent or a school official. Therefore, [the District] has the option to require, prohibit, limit or otherwise regulate the use of recording devices at IEP meetings." [OSEP 2003](#).

committee meeting.⁸⁴ When a parent or guardian makes a written request for an ARD committee meeting, the Special Education Case Manager will provide the written explanation above or coordinate with the student's parents, guardians, teachers and related service providers to schedule the ARD committee meeting.

PRACTICE GUIDE—The Director of Special Education or designee may consider some of these reasons for declining a parent's request for an ARD committee meeting: personnel-related matters, extracurriculars, location of services, attendance and requirements related to public health and safety issues.

⁸⁴ 19 TEX. ADMIN. CODE § 89.1050(e) TEC 29.005(c)

3.10 *How does the District ensure Limited English Proficient parents or guardians are included in the IEP development process?*

If the parent or guardian is limited English proficient and the parent or guardian's native language is Spanish, the District will provide notices to the parent or guardian in Spanish. If the parent or guardian's native language is other than English or Spanish, the District will make a good faith effort to provide notices to the parent or guardians in the parent or guardian's native language unless it is clearly not feasible to do so. The term "native language" means the language normally used by the parent or guardian.⁸⁵ *Limited English Proficient* (LEP) is equivalent to *English Learner* (EL) in the special education context.⁸⁶

If the parent or guardian is limited English proficient and the parent or guardian's native language is Spanish, the District will provide at any ARD committee meeting a person who is able to interpret for the parent or guardian. If a parent or guardian's native language is other than Spanish, the District will make a good faith effort to obtain an interpreter or translator to assist the parent or guardian.⁸⁷ The ARD Chair shall coordinate with the student's Special Education Case Manager to ensure that the parents or guardians of students with a disability whose native language is other than English are able to participate in the ARD committee meeting with the assistance of translators and interpreters, as appropriate. The Special Education Case Manager shall document these efforts in ARD committee documents and preserve in the student's special education file all written correspondence or communications logs with parents or guardians and other individuals regarding the District's efforts.

If the student's parent or guardian is unable to speak English and the parent or guardian's native language is Spanish, the District shall provide a written copy or audio recording of the student's IEP translated into Spanish.⁸⁸ If the parent or guardian's native language is a language other than Spanish, the District shall make a good faith effort to provide the parent with a written copy or audio recording of the student's IEP translated into the parent or guardian's native language. When translating a student's IEP, all of the text in the student's IEP shall be accurately translated, resulting in a comparable rendition of the IEP in English and not a partial translation or summary.⁸⁹

3.11 *How does the District ensure that a student's IEP is implemented?*

After the IEP is written and a placement is determined, the Special Education Case Manager shall coordinate with the student's special and general education teachers and related service providers to ensure the student is provided the special education and related services identified in the IEP.⁹⁰ The special education case manager shall make the student's IEP accessible to each regular

⁸⁵ 20 U.S.C. § 1401(20)

⁸⁶ 34 C.F.R. § 300.27

⁸⁷ 34 C.F.R. § 300.322(e)

⁸⁸ 19 TEX. ADMIN. CODE § 89.1050(i); Tex. Ed. Code § 29.005(d)

⁸⁹ 19 TEX. ADMIN. CODE § 89.1050(i)(1)

⁹⁰ 34 CFR § 300.323(c)

education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation.⁹¹ Additionally, the Special Education Case Manager shall inform each regular teacher, special education teacher, related service provider, and any other service provider who is responsible for the implementation of the student's IEP, of each of her or his specific responsibilities related to implementation of the student's IEP and the specific accommodations, modifications, and supports that must be provided for the student as identified in the IEP.⁹²

PRACTICE GUIDE—Teachers and other providers must comply with confidentiality requirements of FERPA and the District's Board Policy FL(Local).

The Special Education Case Manager shall maintain an eligibility folder for each student receiving special education services, in addition to the student's cumulative record. The eligibility folder shall include, but need not be limited to, copies of referral data; documentation of notices and consents; evaluation reports and supporting data; ARD committee reports; and the student's IEPs.⁹³

Each Special Education Case Manager shall ensure that each teacher who provides instruction to a student with disabilities:

- has access to the student's current IEP;
- is informed of the teacher's specific responsibilities related to implementation of the IEP, such as goals and objectives;
- is informed of needed accommodations, modifications, and supports for the student that must be provided for the student in accordance with the IEP; and
- has an opportunity to request assistance regarding implementation of the student's IEP.⁹⁴

Each Special Education Case Manager shall develop a process to be used by a teacher who instructs a student with a disability in a regular classroom setting to:

- request a review of the student's IEP; and
- provide input in the development of the student's IEP.

Each Special Education Case Manager shall timely respond to the teacher's request; and provide for notification to the student's parent or guardian of the teacher's response.⁹⁵

⁹¹ 34 CFR § 300.323(d)

⁹² *Id.*

⁹³ 19 TEX. ADMIN. CODE § 89.1075(a)

⁹⁴ 19 TEX. ADMIN. CODE § 89.1075(c)

⁹⁵ 19 TEX. ADMIN. CODE § 89.1075(d)

PRACTICE GUIDE—The campus designee may provide the teacher with information regarding how to access student data, including a student’s most recent IEP and the data discussed at the student’s most recent ARD committee meeting, which may include accommodations and the student’s BIP. The Director of Special Education will ensure that the District’s electronic file retrieval system contains the appropriate student information in a readily accessible format for internal review. In some circumstances, it may be helpful to request acknowledgement of receipt or confirmation of review of relevant student data.

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3.12 How does the District ensure adult students are included in the IEP development process?

At least one year before a student with a disability turns 18, the ARD Chair shall ensure that the student’s IEP contains a statement regarding the transfer of special education rights and responsibilities at the age of 18. The student’s IEP shall also state that the student has been provided information and resources regarding guardianship, alternatives to guardianship, including a supported decision-making agreement and other supports and services that may enable the student to live independently. When the student turns 18, the Special Education Case Manager shall notify the adult student and her or his parent or guardian of the transfer of parental rights, and shall begin sending both the parent or guardian and student any notice required in these Operating Procedures.⁹⁷

3.13 What happens when a student with an IEP graduates with a regular high school diploma?

Graduation from the District with a regular high school diploma terminates a student's eligibility to receive special education and related services.⁹⁸ A student who receives special education services may graduate and be awarded a regular high school diploma if the student has demonstrated mastery of the required state standards (or district standards, if greater) and completed credit requirements (for graduation under the Foundation High School Program) specified in the Foundation High School Program that are applicable to students in general education, as well as satisfactory performance on the required state assessments, unless the student's ARD committee has determined that satisfactory performance on the required state assessments is not necessary for graduation.⁹⁹

The ARD Chair shall ensure that whenever a student’s eligibility for special education and related services is terminated through receipt of a regular high school diploma or because the student no

⁹⁶ 19 TEX. ADMIN. CODE § 89.1075(c)

⁹⁷ 19 TEX. ADMIN. CODE § 89.1049

⁹⁸ 19 TEX ADMIN. CODE § 89.1070(a)

⁹⁹ 19 TEX. ADMIN. CODE § 89.1070(b)(1)

longer meets age eligibility requirements for special education and related services, the special education case manager shall provide the student a written summary of the student's then-present level of academic achievement and functional performance. This summary must consider, as appropriate, the views of the parent or guardian and student, and written recommendations from adult service agencies on how to assist the student in meeting postsecondary goals. An evaluation or REED shall be included as part of the summary.¹⁰⁰

For students who receive a diploma based upon successful completion of the IEP and other relevant factors, the ARD committee shall determine needed educational services upon the request of the student or the student's parent or guardian to resume services, as long as the student meets the age eligibility requirements set out in **CHILD FIND: Section 1.2** above.¹⁰¹

3.14 What are the District's obligations to children transitioning from IDEA Part C Early Intervention Services (EIS) to IDEA Part B Early Childhood Special Education (ECSE)?

South Texas ISD is a secondary grade level magnet school district. As students transition to their secondary school option with STISD, the receiving school will collaborate with the student's school district to obtain records and provide the necessary supports.

3.15 Are there limitations on the right to FAPE?

If the parent of a student enrolled in South Texas ISD or seeking to be enrolled in the District does not provide consent for the student's full individual and initial evaluation, or the parent fails to respond to a request to provide consent, South Texas ISD may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards under IDEA. South Texas ISD will use reasonable efforts to obtain parental consent. South Texas ISD will also document its efforts to obtain parental consent, and maintain such documentation in the student's special education file. The level of effort shall be appropriate to the situation. The actions of South Texas ISD when seeking parental consent will reflect genuine effort and will include more than one effort or means. If the parent or guardian does not provide consent for the student's full individual and initial evaluation after the District has requested and sought to obtain such consent, the District does not violate its *Child Find* and FAPE obligations to the student if the District declines to pursue the evaluation under these circumstances by requesting a due process hearing to override the parent's lack of consent.¹⁰²

The South Texas ISD shall obtain informed consent from the parent or guardian of a student before the initial provision of special education and related services to the student. South Texas ISD will not construe consent for initial evaluation as consent for initial provision of special education and related services. The Special Education Case Manager shall make reasonable efforts to obtain

¹⁰⁰ 19 TEX. ADMIN. CODE § 89.1070(h)

¹⁰¹ 19 TEX. ADMIN. CODE § 89.1070(k)

¹⁰² 34 C.F.R. § 300.300(a)(3)

informed consent from the parent or guardian for the initial provision of special education and related services; however, if the parent or guardian fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, South Texas ISD cannot seek to override the parent's refusal to consent to the initial provision of special education and related services to the student. If the parent does not provide informed written consent for the initial provision of special education and related services, South Texas ISD will not be considered to be in violation of the requirement to make FAPE available to the student because of the failure to provide the student with the special education and related services for which the parent refuses to or fails to provide consent. South Texas ISD is also not required to convene an ARD committee meeting or develop an IEP for the student.¹⁰³

If, at any time subsequent to the initial provision of special education and related services, the parent or guardian of a student revokes consent in writing for the continued provision of special education and related services, South Texas ISD:

- may not continue to provide special education and related services to the student, but shall provide **Prior Written Notice, including TEA's Notice of Procedural Safeguards, before** ceasing the provision of special education and related services;
- may not use the dispute resolution procedures in IDEA in order to obtain agreement or a ruling that the services may be provided to the student;
- will not be considered to be in violation of the requirement to make FAPE available to the student because of the failure to provide the student with further special education and related services; and
- is not required to convene an ARD committee meeting or develop an IEP for further provision of special education and related services.¹⁰⁴

Unless a parent or guardian has enrolled a student in private school as described in Section 3.6, above, that student's enrollment in a private school relieves South Texas ISD of any responsibility for the provision of a FAPE, but the student may be considered for proportionate share services.¹⁰⁵ Likewise, students attending a homeschool program are not entitled to FAPE but may be considered for proportionate share services. TEA, and therefore South Texas ISD, does not regulate, index, monitor, approve, register, or accredit the programs available to parents who choose to home school. This is consistent with the Texas Supreme Court decision rendered in *Texas Education Agency v. Leeper*.¹⁰⁶

¹⁰³ 34 C.F.R. § 300.300(b)(3)

¹⁰⁴ 34 C.F.R. § 300.300(b)(4)

¹⁰⁵ 19 TEX. ADMIN. CODE § 89.1096

¹⁰⁶ *Texas Education Agency v. Leeper*, 893 S.W.2d 432 (Tex. 1994)

3.16 *How does the District provide FAPE via virtual or remote instruction?*

In accordance with [guidance from the TEA](#), each student's Special Education Case Manager is encouraged to offer to convene ARD committee meetings to develop emergency contingency plans as part of a student's IEP that provides for virtual or other remote services and instruction during periods of cessation of normal school operations in response to a natural disaster, pandemic and/or other public health and safety crisis in accordance with federal, state and local authorities. A student's Special Education Case Manager may also propose that a student's ARD committee and the parent(s) or guardian(s) agree to modify a student's IEP to include a separate schedule of related services and accommodations that will be followed during periods of remote or virtual instruction. Each Special Education Case Manager, together with input from the parent or guardian and the student's ARD committee, may choose to use the model [Special Education Emergency Contingency Plan](#) developed by the [TEA or other plan as determined by the District](#).

According to nonbinding guidance from [OSEP on September 28, 2020](#), ARD committees should consider—

- “how a student's IEP will be implemented with traditional in-person instruction
- how services also could be provided through remote/distance instruction if circumstances require a change to distance learning or a hybrid model.”¹⁰⁷

When ARD committees make these determinations, the ARD committee, together with the parent or guardian, may also consider:

- alternate available instructional methodologies or delivery;
- online instruction, teleconference, direct instruction via telephone or videoconferencing; and
- consultative services to the parent, if feasible and appropriate.¹⁰⁸

The LSSP/Educational Diagnostician or appropriate assessment personnel will investigate all appropriate assessment instruments and tools to determine if some can be administered or completed remotely during the natural disaster, pandemic and/or other public health and safety crisis, provided that evaluation of the student is based on personal observation (whether in person or through tele- or videoconferencing).

The LSSP/Educational Diagnostician or appropriate assessment personnel may coordinate with the developers of their current assessment instruments to determine if the instruments can be

¹⁰⁷ OSEP. [Part B Implementation of IDEA Provision of Services in the Current COVID-19 Environment Q&A Document](#), September 28, 2020.

¹⁰⁸ *Id.*

administered or completed remotely, without significantly impacting the validity and reliability of the results. Tests and other evaluation materials must be used for the purposes for which the assessments or measures are valid and reliable, and must be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessments.¹⁰⁹

¹⁰⁹ 34 C.F.R. § 300.304(c)(1)(iii)-(v)

AUTISM

Students with autism typically have a developmental disability *significantly* impacting verbal and nonverbal communication and social interaction which adversely affects a student's educational performance. This delay generally manifests prior to the age 3.¹

A student may not be determined eligible as a student with autism if the student's educational performance is adversely affected primarily because the student has an emotional disturbance.²

The written evaluation report by the group of qualified professionals must include specific recommendations for behavioral interventions and strategies.³

Additional characteristics associated with autism may include—

- engagement in repetitive activities and stereotyped movements;
- resistance to environmental change or change in daily routines; and/or
- unusual responses to sensory experiences.

A student who manifests the characteristics of autism after age 3 could be identified as having autism if the criteria in this section are identified.⁴

The definitions of conditions or categories that are used for purposes of establishing an individual's eligibility for mental health services, as found in the Diagnostic and Statistical Manual of Mental Disorders (DSM), are not synonymous with criteria used for determining whether a child is a “child with a disability” for purposes of establishing eligibility for services under the IDEA.⁵ The group of qualified professionals conducting an evaluation of a student suspected of having autism will conduct assessments and observations, and collect data, as necessary for the ARD Committee to make an eligibility determination.

PRACTICE GUIDE—When evaluating a student suspected of having autism, the group of qualified professionals conducting the evaluation may consider components such as observations during structured and unstructured times, autism rating scales by more than one rater, speech and language assessment, functional behavioral assessment (FBA) and private evaluation reports diagnosing autism. Private evaluation reports diagnosing or identifying autism may be considered along with the District's autism evaluation of the student. If appropriate to understand the private evaluation report and its recommendations or conclusions, the District may seek the parent's or guardian's consent to release and exchange confidential information with the private provider. If appropriate, the group is encouraged to make recommendations concerning strategies for students with autism as necessary for the development of the IEP. See also SECTION 3.3: FAPE. Recommendations in the evaluation report should be based upon the student's unique needs rather than the area of eligibility.

¹ 34 C.F.R. § 300.8(c)(1)

² 34 C.F.R. § 300.8(c)(1)(ii)

³ 19 TEX. ADMIN. CODE §89.1040(c)(1)

⁴ 34 C.F.R. § 300.8(c)(1)(iii)

⁵ Letter to Coe (OSEP 9/14/1999)

DEAF-BLINDNESS

A student who may be eligible under the category of deaf-blindness must have concurrent or coexistent hearing and visual impairments. Additionally, the combination of these impairments must cause such severe communication and other developmental and educational needs that the eligible student cannot be accommodated in a special education program solely for children with deafness or children with blindness.⁶

A student with deaf-blindness is one who, based on an evaluation conducted in accordance with the procedures outlined in **SECTION 2.0: EVALUATIONS**, meets—

- the eligibility criteria for deaf or hard of hearing and visual impairment;
- 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;

A student with deaf-blindness is also one who, based on an evaluation conducted in accordance with the procedures outlined in **SECTION 2.0: EVALUATIONS**, has—

- documented hearing and visual losses that, if considered individually, may not meet the requirements for deaf or hard of hearing or visual impairment, but the combination of such hearing and visual losses adversely affects the student's educational performance; or
- 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.⁷

The group of qualified professionals conducting an evaluation of a student suspected of having deaf-blindness will conduct assessments and observations, and collect data, as necessary for the ARD Committee to make an eligibility determination.

DEAF OR HARD OF HEARING

A student may be eligible for special education and related services as a student who is deaf or hard of hearing⁸ if the hearing impairment is so severe that it impairs the processing of linguistic information through hearing with or without amplification, and that adversely affects educational performance.⁹

⁶ 34 CFR, § 300.8(c)(2)

⁷ 19 TEX. ADMIN. CODE §89.1040(c)(2)

⁸ The terms *auditory impairment*, *hearing impairment*, and *deaf or hard of hearing* are referenced in Texas law and share the same meaning; federal law typically references the terms *deafness* and *hearing impairment*.

⁹ 34 CFR § 300.8(c)(3)

The group of qualified professionals must ensure that the evaluation data includes—

- An otological examination performed by an otolaryngologist or by a licensed medical doctor, with documentation that an otolaryngologist is not reasonably available, and an audiological evaluation performed by a licensed audiologist, and
- a description of the implications of the hearing loss for the student's hearing in a variety of circumstances with or without recommended amplification.¹⁰

The group of qualified professionals conducting an evaluation of a student suspected of being deaf or hard of hearing will conduct assessments and observations, and collect data, as necessary for the ARD Committee to make an eligibility determination. The group should consider the student's unique mode of communication when conducting the evaluation.¹¹

PRACTICE GUIDE—When evaluating a student suspected of being deaf or hard of hearing, the group of qualified professionals selecting and using standardized tests to assess cognitive functioning and academic achievement may consider whether the tests have been normed for students who are deaf or hard of hearing. The group may request the student's most recent audiological evaluation report and recommendations concerning the student's need for amplification. If appropriate to understand private evaluation reports and their recommendations or conclusions, including recommendations for amplification and use of assistive technology, the District may seek the parent's or guardian's consent to release and exchange confidential information with the private provider. Recommendations in the evaluation report should be based upon the student's unique needs rather than the area of eligibility.

EMOTIONAL DISTURBANCE

A student may be eligible for special education and related services as a student with an emotional disturbance if the student exhibits one or more of the following characteristics over a long period of time and to a marked degree that adversely affects educational performance:

- an inability to learn, which cannot be explained by intellectual, sensory, or health factors;
- an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- inappropriate types of behavior or feelings under normal circumstances;
- a general pervasive mood of unhappiness or depression; or
- a tendency to develop fears or physical symptoms associated with personal or school problems.

¹⁰ 19 TEX. ADMIN. CODE §89.1040(c)(3)

¹¹ Tex. Ed. Code § 29.303

The term "emotional disturbance" also includes students with schizophrenia. The term does not include a student who is socially maladjusted unless the ARD Committee determines based on evaluation by a group of qualified professionals that the student has an emotional disturbance consistent with the criteria outlined above.¹² The term "social maladjustment" is a persistent pattern of violating social norms with truancy, substance abuse, perpetual struggle with authority or manipulation.¹³

With respect to the criterion that the student manifest one or more characteristics of emotional disturbance to a "marked degree," this generally refers to the frequency, duration, or intensity of a student's emotionally disturbed behavior in comparison to the behavior of peers and can be indicative of either degree or acuity or pervasiveness.¹⁴

The definitions of conditions or categories that are used for purposes of establishing an individual's eligibility for mental health services, as found in the Diagnostic and Statistical Manual of Mental Disorders (DSM), are not synonymous with criteria used for determining whether a child is a "child with a disability" for purposes of establishing eligibility for services under the IDEA.¹⁵ IDEA neither requires nor precludes the application of the DSM criteria in making eligibility determinations. The DSM classification system may assist the group of qualified professionals in evaluating and diagnosing disability conditions in students, including the disability condition of emotional disturbance.¹⁶

The group of qualified professionals conducting an evaluation of a student suspected of having an emotional disturbance will conduct assessments and observations, and collect data, as necessary for the ARD Committee to make an eligibility determination.

The group of qualified professionals must ensure that the written evaluation report includes specific recommendations for behavioral supports and interventions.¹⁷

¹² 34 CFR § 300.8(c)(4)

¹³ *Hansen v. Republic R-III School District*, 632 F.3d 1024 (8th Cir. 2011); *Springer v. Fairfax County School Board*, 134 F.3d 659 (4th Cir. 1998).

¹⁴ *Letter to Anonymous* (OSEP 8/11/1989)

¹⁵ *Letter to Coe* (OSEP 9/14/1999)

¹⁶ *Letter to Woodson* (OSEP 4/5/1989)

¹⁷ 19 TEX. ADMIN. CODE §89.1040(c)(4)

PRACTICE GUIDE—When evaluating a student suspected of having an emotional disturbance, the group of qualified professionals conducting the evaluation may consider components such as observation during structured and unstructured times and/or a behavior rating scale including ratings by more than one rater. The group may consider additional components such as a functional behavioral assessment (FBA), disciplinary history, and the student's history of in-patient or other hospitalizations or therapeutic placements. The group completing the evaluation may consider specifying examples of how the student manifests the characteristics that may be the basis of the student's serious emotional disturbance eligibility. If appropriate to understand private evaluation reports, their recommendations or conclusions, or the student's placement history, the District may seek the parent's or guardian's consent to release and exchange confidential information with the private provider. Recommendations in the evaluation report should be based upon the student's unique needs rather than the area of eligibility.

INTELLECTUAL DISABILITY

A student with an intellectual disability displays *significantly* sub-average general intellectual functioning, coexisting with deficits in adaptive behavior, that adversely affects the student's educational performance.¹⁸ The student's sub-average general intellectual functioning and coexistent deficits in adaptive behavior typically manifest during the student's developmental period.

A student with an intellectual disability is one who:

- has been determined to have significantly sub-average intellectual functioning as measured by a standardized, individually administered test of cognitive ability in which the overall test score is at least two standard deviations below the mean, when taking into consideration the standard error of measurement of the test; and
- concurrently exhibits deficits in at least two of the following areas of adaptive behavior: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, or safety.¹⁹

The group of qualified professionals conducting an evaluation of a student suspected of having an intellectual disability will conduct assessments and observations, and collect data, as necessary for the ARD Committee to make an eligibility determination.

It is permissible to have evaluation criteria that use intelligence tests to determine whether a child has a disability, provided that the intelligence test has been validated for the specific purpose for which it is being used, that neither the test itself nor its administration is racially or culturally

¹⁸ 34 CFR § 300.8(c)(6)

¹⁹ 19 TEX. ADMIN. CODE §89.1040(c)(5)

discriminatory, and does not constitute the sole criterion for determining an appropriate educational program for a child.²⁰

PRACTICE GUIDE—When evaluating a student suspected of having an intellectual disability, the group of qualified professionals conducting the evaluation may indicate the degree of cognitive disability to enable the ARD committee to develop goals that are appropriately ambitious, but not ambitious beyond what may be reasonably expected given the student’s unique circumstances.²¹ The group may consider adaptive behavior assessments to guide the ARD committee in developing an IEP that addresses the student’s unique functional needs. Recommendations in the evaluation report should be based upon the student’s unique needs rather than the area of eligibility.

A student who may be eligible for special education and related services as a student with multiple disabilities has more than one disability or concurrent impairments (such as intellectual disability and a visual impairment or an emotional disturbance and orthopedic impairment). The combination of these disabilities results in such severe educational need that the student cannot be accommodated in special education programs designed solely for students with one of the impairments. “Multiple disabilities” does not include deaf-blindness.²²

To qualify as a student with multiple disabilities, the student must have a combination of disabilities and meet all of the following conditions—

- The student's disability is expected to continue indefinitely, and
- the disabilities severely impair performance in two or more of the following areas:
 - psychomotor skills
 - self-care skills
 - communication
 - social and emotional development
 - cognition.

Students who have more than one of the disabilities but who do not meet the criteria cited above must not be classified or reported as having multiple disabilities.²³

The group of qualified professionals conducting an evaluation of a student suspected of having multiple disabilities will conduct assessments and observations, and collect data, as necessary for the ARD Committee to make an eligibility determination.

²⁰ *Letter to Warrington* (OSEP 9/2/1993)

²¹ *E.R. v. Spring Branch Independent School District*, 909 F.3d 754 (5th Cir. 2018)

²² 34 CFR § 300.8(c)(7)

²³ 19 TEX. ADMIN. CODE §89.1040(c)(6)

ORTHOPEDIC IMPAIRMENT

A student with a severe orthopedic impairment adversely affecting her or his educational performance may be eligible for special education and related services. The phrase *orthopedic impairment* includes impairments caused by disease, like poliomyelitis or bone tuberculosis, as well as impairments from other causes, such as cerebral palsy, amputations, and fractures or burns that cause contractures.²⁴

The group of qualified professionals that collects or reviews evaluation data in connection with the determination of a student's eligibility based on an orthopedic impairment must include a licensed physician.²⁵ “Medical services” under IDEA are defined as services provided by a licensed physician to determine whether a child has a medically related disabling condition, which results in the child's need for special education and related services.²⁶ The District will ensure that such services are at no cost to the parent.²⁷

The group of qualified professionals conducting an evaluation of a student suspected of having an orthopedic impairment will conduct assessments and observations, and collect data, as necessary for the ARD Committee to make an eligibility determination.

PRACTICE GUIDE— When evaluating a student suspected of having an orthopedic impairment, the group of qualified professionals conducting the evaluation may consider components such as a motor skills assessment. The group may want to consider additional components such as an assistive technology assessment and reports prepared by private providers. If appropriate to understand private evaluation reports, their recommendations or conclusions, the District may seek the parent's or guardian's consent to release and exchange confidential information with the private provider. The District may consider seeking consent for medical evaluation at District expense by professionals selected by the District, if necessary, to understand a student's eligibility for special education and unique disability-related needs. Recommendations in the evaluation report should be based upon the student's unique needs rather than the area of eligibility.

OTHER HEALTH IMPAIRMENT

A student may be eligible for special education and related services as a student with Other Health Impairment (OHI) if the student exhibits limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, resulting in limited alertness in the educational environment, which is due to chronic or acute health problems, and by reason thereof demonstrates an educational need for specially designed instruction.²⁸

²⁴ 34 CFR § 300.8(c)(8)

²⁵ 19 TEX. ADMIN. CODE §89.1040(c)(7)

²⁶ 34 CFR § 300.34(c)(5)

²⁷ Letter to Anonymous (OSEP 6/3/2020)

²⁸ 34 CFR § 300.8(c)(9)

This disability category includes such health conditions as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome.²⁹ The list of acute or chronic health conditions in the definition of OHI is not exhaustive, but rather provides examples of problems that children have that could make them eligible for special education and related services under the category of other health impairment.^{30 31}

The group of qualified professionals that collects or reviews evaluation data in connection with the determination of a student's eligibility based on other health impairment must include a licensed physician.³² “Medical services” under IDEA are defined as services provided by a licensed physician to determine whether a child has a medically related disabling condition, which results in the child's need for special education and related services.³³ The District will ensure that such services are at no cost to the parent.³⁴

PRACTICE GUIDE— When areas of assessment require the input of a licensed physician, such as when considering an Other Health Impairment (OHI), the District may either arrange to have the student examined at District expense by a physician selected by the District or choose to have a physician who has previously treated the student complete the OHI form. When the District elects to have a physician who has previously treated the student complete the student's OHI form or otherwise provide evaluative input, the District should seek the parent's or guardian's consent for disclosure and exchange of confidential information with the student's physician.

The group of qualified professionals conducting an evaluation of a student suspected of having an OHI will conduct assessments and observations, and collect data, as necessary for the ARD Committee to make an eligibility determination.³⁵

SPECIFIC LEARNING DISABILITY

See also SECTION 2.7: EVALUATIONS.

Prior to conducting an initial evaluation of a student suspected of having a specific learning disability, in order to ensure that underachievement in a student suspected of having a specific

²⁹ *Id.*

³⁰ 71 Fed. Reg. 46550 (August 14, 2006)

³¹ *Letter to Sterner* (OSEP 8/19/1998)

³² 19 TEX. ADMIN. CODE §89.1040(c)(8)

³³ 34 CFR § 300.34(c)(5)

³⁴ *Letter to Anonymous* (OSEP 6/3/2020)

³⁵ *Alvin Independent School District v. A.D.*, 503 F.3d 378 (5th Cir. 2007)(Student was not eligible under IDEA because he had passing grades and success on state skills test evidencing academic progress; his teachers testified that, despite his behavioral issues, he did not need special education and was achieving social success in school; and many of his behavioral problems resulted from non-ADHD related issues like alcohol abuse and a death in the family).

learning disability is not due to lack of appropriate instruction in reading or mathematics, the group of qualified professionals will consider the following:

- Data that demonstrates the student was provided appropriate instruction in reading and/or mathematics within general education settings delivered by qualified personnel.
- Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal evaluation of student progress during instruction.
 - Documentation of the repeated assessments may include RtI progress monitoring data, in-class tests on grade-level curriculum, or other regularly administered District or classroom assessments. Intervals are considered reasonable if consistent with the assessment requirements of a student's specific instructional program.³⁶

In order to qualify as a student with a specific learning disability (SLD), the student—

- has been determined through a variety of assessment tools and strategies to meet the criteria for a specific learning disability;
- does not achieve adequately for the student's age or meet state-approved grade-level standards in oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, or mathematics problem solving when provided appropriate instruction, as indicated by performance on multiple measures such as in-class tests; grade average over time (e.g. six weeks, semester); norm- or criterion-referenced tests; statewide assessments; or a process based on the student's response to evidence-based intervention;
- does not make sufficient progress when provided a process based on the student's response to evidence-based intervention as indicated by the student's performance relative to the performance of the student's peers on repeated, curriculum-based assessments of achievement at reasonable intervals, reflecting student progress during classroom instruction; or
- exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to age, grade-level standards, or intellectual ability, as indicated by significant variance among specific areas of cognitive function, such as working memory and verbal comprehension, or between specific areas of cognitive function and academic achievement.³⁷

³⁶ 19 TEX. ADMIN. CODE § 89.1040(c)(9)

³⁷ *Id.*; 34 C.F.R. § 300.309

When considering a student for eligibility as a student with a specific learning disability, the group of qualified professionals will:

- use information from an observation in routine classroom instruction and monitoring of the student's performance that was done before the student was referred for an evaluation; or
- have at least one member of the group of qualified professionals conduct an observation of the student's academic performance in the regular classroom.³⁸

The group of qualified professionals conducting an evaluation of a student suspected of having a specific learning disability will conduct assessments and observations, and collect data, as necessary for the ARD Committee to make an eligibility determination.

SPEECH OR LANGUAGE IMPAIRMENT

A speech or language impairment includes communication disorders, such as stuttering, impaired articulation, expressive or receptive language impairment, or voice impairment that adversely affects a student's educational performance.³⁹

The group of qualified professionals that collects or reviews evaluation data in connection with the determination of a student's eligibility based on a speech or language impairment must include a certified speech and hearing therapist, a certified speech and language therapist, or a licensed speech/language pathologist.⁴⁰

The group of qualified professionals conducting an evaluation of a student suspected of having a speech or language impairment will conduct assessments and observations, and collect data, as necessary for the ARD Committee to make an eligibility determination.

TRAUMATIC BRAIN INJURY

Students with traumatic brain injury have acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.⁴¹

³⁸ 34 CFR § 300.310(b)

³⁹ 34 CFR § 300.310(c)(11)

⁴⁰ 19 TEX. ADMIN. CODE § 89.1040(c)(10)

⁴¹ 34 CFR § 300.8(c)(12)

The group of qualified professionals that collects or reviews evaluation data in connection with the determination of a student's eligibility based on a traumatic brain injury must include a licensed physician, in addition to—

- a licensed specialist in school psychology (LSSP)⁴²
- an educational diagnostician, or
- other appropriately certified or licensed practitioner with experience and training in the area of the disability.⁴³

“Medical services” under IDEA are defined as services provided by a licensed physician to determine whether a child has a medically related disabling condition, which results in the child's need for special education and related services.⁴⁴ The District will ensure that such services are at no cost to the parent.⁴⁵

The group of qualified professionals conducting an evaluation of a student suspected of having a traumatic brain injury will conduct assessments and observations, and collect data, as necessary for the ARD Committee to make an eligibility determination.

PRACTICE GUIDE—When evaluating a student suspected of having a traumatic brain injury, the group of qualified professionals conducting the evaluation may consider additional components such as an assistive technology assessment and reports prepared by private providers. If appropriate to understand private evaluation reports, their recommendations or conclusions, the District may seek the parent's or guardian's consent to release and exchange confidential information with the private provider. The District may consider seeking consent for medical evaluation at District expense by professionals selected by the District, if necessary, to understand a student's eligibility for special education and unique disability-related needs. Recommendations in the evaluation report should be based upon the student's unique needs rather than the area of eligibility.

VISUAL IMPAIRMENT

A student with a visual impairment may qualify for special education and related services if the student has an impairment in vision, even with correction (such as glasses or contact lenses), that adversely affects educational performance. The phrase *visual impairment* includes both partial sight and blindness.⁴⁶

A student with a visual impairment is one who—

- has been determined by a licensed ophthalmologist or optometrist to

⁴² 22 TEX. ADMIN. CODE § 465.38(b)(effective October 7, 2020)

⁴³ 19 TEX. ADMIN. CODE § 89.1040(c)(11)

⁴⁴ 34 CFR § 300.34(c)(5)

⁴⁵ *Letter to Anonymous* (OSEP 6/3/2020)

⁴⁶ 34 CFR § 300.8(c)(13)

- have no vision or to have a serious visual loss after correction or
- have a progressive medical condition that will result in no vision or a serious visual loss after correction.⁴⁷

If the student with a visual impairment will use tactual media (which includes braille) as a primary tool for learning to be able to communicate in both reading and writing at the same level of proficiency as other students of comparable ability, the student with a visual impairment is considered to be functionally blind.⁴⁸

The group of qualified professionals that collects or reviews evaluation data in connection with the determination of a student's eligibility based on a visual impairment includes a person who is appropriately certified as an orientation and mobility specialist.⁴⁹ The District must ensure that an appropriately certified orientation and mobility specialist is included in any reevaluation of a student who has been determined to be eligible for the district's special education program on the basis of a visual impairment.⁵⁰

The written report from the group of qualified professionals includes:

- a report by a licensed ophthalmologist or optometrist of the student's visual loss stated in exact measures of visual field and corrected visual acuity at a distance and at close range in each eye. If exact measures cannot be obtained, the eye specialist must so state and provide best estimates. The report by the licensed ophthalmologist or optometrist should also include prognosis whenever possible.⁵¹
- a functional vision evaluation by a certified teacher of students with visual impairments or a certified orientation and mobility specialist that includes the performance of tasks in a variety of environments requiring the use of both near and distance vision and recommendations concerning the need for a clinical low vision evaluation.⁵²
- a learning media assessment by a certified teacher of students with visual impairments including recommendations concerning which specific visual, tactual, and/or auditory learning media are appropriate for the student and whether or not there is a need for ongoing evaluation in this area.
- an orientation and mobility evaluation conducted by a person who is appropriately certified as an orientation and mobility specialist and must be conducted 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.

⁴⁷ 19 TEX. ADMIN. CODE § 89.1040(c)(12)(A)

⁴⁸ 19 TEX. ADMIN. CODE § 89.1040(c)(12)(B)

⁴⁹ 19 TEX. ADMIN. CODE § 89.1040(c)(12)(D)

⁵⁰ 19 TEX. ADMIN. CODE § 89.1040(c)(12)(E)

⁵¹ 19 TEX. ADMIN. CODE § 89.1040(c)(12)(A)

⁵² 19 TEX. ADMIN. CODE § 89.1040(c)(12)(A)(ii)(I)

The group of qualified professionals conducting an evaluation of a student suspected of having a visual impairment will conduct assessments and observations, and collect data, as necessary for the ARD Committee to make an eligibility determination.

NONCATEGORICAL EARLY CHILDHOOD

Children between the ages of 3-5 who are evaluated as having an intellectual disability, an emotional disturbance, a specific learning disability or autism may be described as “noncategorical early childhood” for the purposes of special education eligibility.⁵³

The group of qualified professionals that collects or reviews evaluation data in connection with the determination of the child's eligibility based on noncategorical early childhood must include the applicable members for intellectual disability, emotional disturbance, specific learning disability, or autism. The group of qualified professionals conducting an evaluation of a student suspected of meeting eligibility criteria for a noncategorical early childhood disability will conduct assessments and observations, and collect data, as necessary for the ARD Committee to make an eligibility determination.

FOR MORE INFORMATION ABOUT EACH AREA OF ELIGIBILITY

In Texas, eligibility is determined by the student’s Admission, Review and Dismissal (ARD) committee.⁵⁴ The phrase *multidisciplinary team* refers to the group of District staff tasked with using a variety of assessment tools and strategies to gather relevant functional, academic and developmental information about the student, including information provided by the parent, as part of the special education evaluation process.⁵⁵

- For more information about [**AUTISM**](#), please contact Director of Special Education/LSSP/Educational Diagnostician
- For more information about [**DEAF-BLINDNESS**](#), please contact Director of Special Education/LSSP/Educational Diagnostician
- For more information about [**DEAF OR HARD OF HEARING**](#), please contact Director of Special Education/LSSP/Educational Diagnostician.
- For more information about [**EMOTIONAL DISTURBANCE**](#), please contact Director of Special Education/LSSP/Educational Diagnostician.
- For more information about [**INTELLECTUAL DISABILITY**](#), please contact Director of Special Education/LSSP/Educational Diagnostician.

⁵³ 19 TEX. ADMIN. CODE § 89.1040(c)(13)

⁵⁴ 19 TEX. ADMIN. CODE § 89.1040(b); 19 TEX. ADMIN. CODE § 89.1050(a)(5)

⁵⁵ 34 C.F.R. § 300.306

- For more information about [MULTIPLE DISABILITIES](#), please contact Director of Special Education/LSSP/Educational Diagnostician.
- For more information about [ORTHOPEDIC IMPAIRMENT](#), please contact Director of Special Education/LSSP/Educational Diagnostician.
- For more information about [OTHER HEALTH IMPAIRMENT](#), please contact Director of Special Education/LSSP/Educational Diagnostician.
- For more information about [SPECIFIC LEARNING DISABILITY](#), please contact Director of Special Education/LSSP/Educational Diagnostician.
- For more information about [SPEECH OR LANGUAGE IMPAIRMENT](#), please contact Director of Special Education/LSSP/Educational Diagnostician.
- For more information about [TRAUMATIC BRAIN INJURY](#), please contact [Director of Special Education/LSSP/Educational Diagnostician.
- For more information about [VISUAL IMPAIRMENT](#), please contact Director of Special Education/LSSP/Educational Diagnostician.
- For more information about [NONCATEGORICAL EARLY CHILDHOOD](#), please contact Director of Special Education/LSSP/Educational Diagnostician.