



**LA PRYOR ISD**

*PREPARING THE FUTURE*

**Special Education Operating Guidelines v. 3**

**EDUCATION**

## **LA PRYOR INDEPENDENT SCHOOL DISTRICT**

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## Mission Statement

In partnership with parents and the community, LPISD exists to provide a comprehensive experience that is high quality, challenging, and inspires all students to make a positive contribution to society.

## Vision

LPISD will be recognized as an outstanding school district, instilling a passion for life-long learning in all students.

LPISD Strategic Plan Goals	
Goal 1:	All students will perform at or above grade level.
Goal 2:	Achievement gaps among all student groups will be eliminated.
Goal 3:	All students will graduate ready for college, career, and life in a globally competitive economy.
Goal 4:	All schools will meet or exceed state accountability standards, and the district will meet federal standards and exceed state standards.

LPISD Strategic Plan Strategies:	
Strategy 1:	Provide a high-quality, well-rounded educational experience to all students that is rigorous, culturally relevant, healthful, and engaging.
Strategy 2:	Build strong relationships with students, families, and the community to increase trust and shared responsibility.
Strategy 3:	Ensure that every classroom has a high-quality, effective educator supported by high-quality, effective administrators and support staff.
Strategy 4:	Align resources to accomplish priorities within a balanced budget.

## Programs:

### Child Find

*Access to Child Find is part of your child's Free and Appropriate Public Education (FAPE).*

*Your child must have an educational need for services which cannot be provided in general education.*

*The ARD Committee must determine how the disability affects participation in age appropriate activities.*

#### Description/Purpose:

The purpose of Child Find is to locate, identify, and evaluate children from birth to 21 years of age and their possible need for special education and related services. Child Find is a free referral and information service available through local education agencies (LPISD) and Education Service Center Region 20.

#### Early Childhood:

If you are a parent of a 3-5 year old who is not enrolled at an LPISD campus, please contact Child Find secretary at (830) 365-4009 ext. 319.

#### School Age:

If you are a parent of a 5-21 year old who is enrolled at an LPISD campus, please contact your child's teacher to begin the referral process.

#### Private School/Proportionate Share:

Each year La Pryor ISD must set aside a proportion of federal funds for children placed in private schools by their parents, and who have been identified with special needs. If you are a parent of a child enrolled in a private school that reside within the LPISD boundaries or attends a private school within LPISD boundaries, please contact your residential campus (LPISD residents) or the campus closest to your child's private school. Please note that proportionate share funds are limited and distributed on a first come, first serve basis.

#### Referral Process:

Referrals may be initiated by parents, (ECI) Early Childhood Intervention agencies or campus staff.

Students receiving services through ECI will be transitioned into the public school system starting as early as 120 days prior to their 3rd birthday.

A physician or community agency may recommend that your child be referred for evaluation; however the parent must initiate the request with the district.

### Eligibility:

Your child must have a disability as defined through federal and state guidelines. As a result of this disability, your child must demonstrate an educational need for services. Disability categories include the following:

- Auditory Impairment\*
- Autism
- Deaf-Blind\*
- Emotional Disturbance
- Intellectual Disability
- Learning Disability
- Multiple Impairment
- Other Health Impairment
- Orthopedic Impairment
- Speech/Language Impairment
- Traumatic Brain Injury
- Visual Impairment\*

*\*Services may begin at birth for children with visual and/or auditory impairments.*

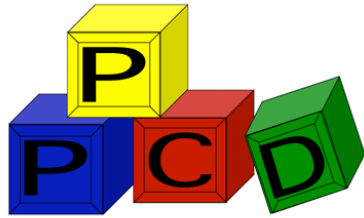
La Pryor Independent School District is committed to quality services for students with disabilities. This commitment is based on the beliefs that special education is a service and not a place. We also recognize services for students with disabilities are individually determined based on identified needs throughout the school day. Placement for services is not based on a student's disability condition or "label," rather services are determined based on the student's needs. Access to and progress in the general curriculum is the primary instructional goal for all services, thus IEPs are crafted within a standards-based framework for all students with a disability.

Decision-making regarding the provision of services including the location or setting is made by an IEP team of concerned stakeholders and follows a specific sequence that begins with a consideration of the student's curricular needs followed by a consideration of the student's type and level of support needs.

This sequence of decisions follows the Least Restrictive Environment provision of the Individuals with Disabilities Education Act and ensures that all options are carefully considered and students are properly placed.

**Services:**

- Preschool Program for Children with Disabilities (PPCD)
- Resource
- Social Behavioral Skills (SBS)
- Lifeskills
- Assistive Technology (AT)
- Occupational and Physical Therapy (OT/PT)
- Speech and Language Services



### Early on...Can make a difference

PPCD provides special education services for any eligible child with an identified need who is between the ages of 3, 4, and 5. Services are provided throughout LPISD campuses at no costs to parents. LPISD also offers bilingual instruction for English Language Learners.

The goal of the Preschool Program for Children with Disabilities is to provide early intervention on various campuses throughout La Pryor ISD. Each child who meets eligibility for PPCD services will have an Individualized Education Plan (IEP) developed through an Admission, Review and Dismissal (ARD) committee to address need in the following areas: Language/Communication, Social Behavioral, Gross and Fine Motor, Daily Living Skills, Pre-Academic and Academic concepts. All services are provided by professional staff in the areas of need for each child. Individualized Education Plans are developed collaboratively by a team who is familiar with the student both at home and in the school setting.

Under Child Find, it is our duty to "locate, identify, and evaluate" any child with a suspected developmental delay or other disability. Please contact our special education department if you have questions about Child Find or would like more information about special education services.

### LIFE SKILLS

Life Skills are services provided to students based on their unique needs. Through the ARD (Admissions Review and Dismissal) Process an Individualized Educational Program is developed to address specific goals. Life skills instruction provides meaningful educational opportunities and instruction to meet the individual needs of each student. Life skills students are an integral part of their school community. Through our mission and vision for

each student, students increase their skills; improve their self-esteem and experience a greater quality of life.

Life skills offers a continuum of services that include small group instruction; inclusion settings; community based vocational instruction and individual instruction in the least restrictive setting appropriate for each student.

Life skills specialists provide supports to teachers throughout the year. Bilingual life skills support is also available.

## **Transition**

### **What is transition?**

Transition is planning for a student's life after graduation.

Transition addresses the life domains of:

- Employment
- Post-secondary education and learning options
- Independent living skills
- Recreation/ leisure activities

Transition involves the student through interviews, inventories and having the student attend ARDs once he/she is 14. A student's IEP must address transition by age 14.

### **When does transition planning begin?**

Transition planning must begin on or before a student's 14th birthday as mandated by state and federal policy.

LPISD provides transition inventories, check lists and Visual Transition Plans to identify student's strengths, preferences, interests and needs. Ask your child's teacher about these planning tools.

### **Why is transition important?**

Once a student exits the school system, all services are based on eligibility instead of entitlement (as are school services). All services must be put in place by family, student and school staff, to avoid a student having no work or opportunities to learn, work or community

Families and schools should be sure to have the supports a student will need after graduation in place before exiting the school system to provide for a seamless flow of services.

### What to consider in transition planning?

1. *When will the student graduate?* Students receiving special education services may stay in school until they are 21 if so desired.
2. *Under what plan will the student graduate?*
  - Distinguished (26 credits)
  - Graduate with Endorsements (26 credits)
  - Foundation Program (22 credits)
  - IEP Completion - age out
3. *Will the student attend college, a trade school, or community classes?*
4. *Will the student work and what resources will be needed to support successful employment?*
5. *What will the student do for recreation and social interaction?*
6. *What financial and personal supports will be needed?*
7. *What transportation services will the student need?*
8. *How will a student pay for medical services and how can the student move smoothly from pediatric to adult services?*

### Resource

Resource is a service that is provided to students as part of a continuum of specialized instructional supports. The goal of this service is to address the unique needs of students in a manner that promotes their academic, cognitive and social success in each student's least restrictive environment. Through an Admission Review and Dismissal (ARD) Committee meeting, an Individualized Education Program (IEP) is developed to address a student's area of need based on an identified disability. A student eligible for Resource services receives instructional support in academic areas of need as identified in the IEP. This instructional support can be provided as a continuum in either the general educational setting or in a

smaller group, special education (resource) setting in the area of disability. Modifications may also be recommended for the general education setting.

## **Occupational and Physical Therapy Services**

The La Pryor Independent School District contracts Occupational and Physical Therapy services that directly support students with identified disabilities to facilitate their independence, success, and safety in the educational environment.

### ***Who We Serve***

The school based occupational therapist (OT) and physical therapist (PT) support students with identified disabilities and their classroom staff.

#### **They provide support with:**

- functional motor development
- self-help skills related to the educational setting
- mobility skills
- positioning for function, health and safety
- adapted equipment
- other needs when appropriate

## **School Based Therapy**

School based therapy services strive to facilitate the student's potential for functional independence and participation in educational activities. This differs from the medical model of therapy services, which focuses on medical needs.

## **Referral Process**

A student who is enrolled in special education programs or who is eligible under the Developmental Disability Act (Section 504) may be referred for an occupational and/or physical therapy assessment.

- A referral may be made if the student has difficulty with skills, abilities or other needs which impact his or her ability to succeed in an educational setting.
- The referral must be made through the appropriate Admission, Review and Dismissal (ARD) committee meeting.
- The student's parent or legal guardian must provide written consent for the assessment.
- Findings of the assessment are reported at an ARD committee meeting. Therapy recommendations are based on educational need.

### **Roles of the Occupational and Physical Therapist**

The professional roles of the occupational and physical therapist are similar. Both are concerned with the development of physical skills, activities of daily living, and environmental adaptations.

- Occupational therapists have additional knowledge in the areas of fine motor and sensory motor skills.
- Physical therapists have additional knowledge in the areas of gross motor skills, mobility, and positioning.

## **OCCUPATIONAL THERAPY AND PHYSICAL THERAPY SERVICES**

The La Pryor Independent School District Occupational Therapy and Physical Therapy consultant supports students with identified disabilities to facilitate their independence, success, and safety in the educational environment. Therapy services are provided within the natural school environment to address the capabilities and challenges presented by a particular disability.

### **Occupational Therapy and Physical Therapy Services under IDEA**

1. ***Related Services*** are provided under IDEA, ***if determined necessary***, in order for a student to ***benefit*** from special education (make progress towards the student's IEP).
2. The need for services is determined through an evaluation keeping in mind; "***Is the service needed*** in order to assist the student with a disability ***to benefit from special education?***"
3. The ARD committee determines, ***based on evaluation and recommendations from the school occupational therapist and/or physical therapist***, the need for services. The amount, time and frequency provided are specified in the student's IEP.

Services are provided in a collaborative and integrated fashion within the natural school environment. Educationally based Physical & Occupational Therapy services are based on a student's function and performance in the school setting. Eligibility for services depends on educational needs. Occupational therapy services are intended to support the child's ability to develop foundation skills necessary to purposefully interact and benefit from his/her specific educational placement.

- The therapist will work with the student, teachers and other team members to assure a collaborative and coordinated service delivery
- The therapist will collaborate with the educational team to develop and implement strategies and accommodations that support the student's IEP. Strategies could include the following:
  - The therapist will assess the student's educational need for modifications in the environment, educationally relevant equipment, technology and assistive devices. Modifications and equipment could include the following: adaptive eating utensils, adaptive writing supplies, adaptive postural supports for walking or sitting, mechanical tools for communication or toy interaction, etc.

Services in the La Pryor Independent School District contracted services and the Occupational Therapy and Physical Therapy providers provide a continuum

of services utilizing a collaborative, integrated approach that may include, but is not limited to, the following:

- Working with students, teachers and other team members to assure a collaborative and coordinated service delivery
- Working hands-on, having face-to-face interactions on a regular basis between the related service professional and the student, which may take place in a variety of settings within the educational environment
- Collaborating with the members of the team to develop the student's IEP • Collaborating with the members of the team to develop and implement strategies and modifications that support student's individualized goals and objectives
- Assessing the student's educational need for modification of environment, educationally relevant equipment, technology, and assistive devices
- Modeling and training classroom staff, students and parents on how to implement educationally relevant therapeutic strategies and use adapted equipment, assistive technology, and devices.
- Liaison with medical professionals
- Assisting the district with modifications of facilities to meet individual student needs to comply with ADA standards.

## Special Education Operating Guidelines Overview

Local Education Agencies (LEA) are required to develop and implement policies, procedures and practices related to the provision of special education services to eligible students. Operating guidelines are the written guidelines developed locally which outline the implementation of these practices.

Furthermore, according to the requirements of IDEA (34 CFR 300.646(b) (1)), the State Education Agency must provide for review and, if appropriate, revision of the policies, procedures and practices related to serving student with disabilities. This process is conducted through the Special Education Monitoring unit of the Division of Program Monitoring and Interventions at the Texas Education Agency.

To assist in meeting the above requirement, the following Operating Guidelines document was directly aligned to the Legal Framework for the Child-Centered Special Education Process hosted at <https://framework.esc18.net>. Each section provides the legal requirements for the identified area. At the end of each section there is an opportunity for the LEA to insert specific information related to the implementation at the local level. The “LEA Specific Information” section allows for district teams to tailor each operating guideline to identify how specific practices are conducted at the local level to address the provision of special education services.

Some guiding questions to consider, if applicable, when localizing your Operating Guidelines are as follows:

1. Who is responsible for implementation of this guideline? (Indicate by position or role)
2. What is the timeline for this guideline?
3. What forms/materials or other resources should be used in implementation of this guideline?
4. What are the steps and/or methods used for implementation of this guideline?
5. How does your LEA ensure that all stakeholders responsible for implementation are notified of this guideline?
6. What is the date of the latest revision?

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# Child Find

## Child Find Duty

*Authorities: 20 U.S.C. §§ 1401, 1412; 42 U.S.C. § 11434a; 34 C.F.R. Part 300; 19 T.A.C. Chapter 89*

All children with disabilities residing in the state, regardless of the severity of their disabilities, and who are in need of special education and related services, must be identified, located, and evaluated.

The term "special education" means specially-designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education.

The term "special education" means adapting, as appropriate to the needs of an eligible child under the Individuals with Disabilities Education Act (IDEA), the content, methodology, or delivery of instruction;

- To address the unique needs of the child that result from the child's disability; and
- To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the local educational agency (LEA) that apply to all children.

The term "related services" means transportation, and such developmental, corrective, and other supportive services as may be required to assist a child with a disability to benefit from special education.

The term "child with a disability" means the child was evaluated according to the FULL AND INDIVIDUAL EVALUATION (FIE) requirements and determined by an ADMISSION, REVIEW, AND DISMISSAL (ARD) COMMITTEE to have an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

In addition to children enrolled in the public schools, the child find duty extends to:

- Children who are homeless children or are wards of the state.
- Children who are attending private schools.

The LEA in which the private school is located must comply with child find for parentally-placed children in private schools.

The LEA must comply with the state's policies and procedures designed to prevent the inappropriate over identification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment.

Prior to referral for possible special education services, the child should be considered for all support services available to all children such as:

- Tutorial;
- Remedial;
- Compensatory;
- Response to scientific, researched-based intervention; and
- Other academic or behavior support services.

### **LEA Specific Information:**

**LPISD Special Education Department- 830-365-4009**

## **District and Campus Improvement Plans**

*Authorities: Texas Education Code 11.251, 11.252(a)(b)(c)(d)(e)(f)(g), 11.253, Chapter 39.053.; Texas Health and Safety Code*

### **District Improvement Plan**

*TEC 11.251; 11.252(a)(b)(c)(d)(e); TEC 38.0042*

Each district must have a district improvement plan that is developed, evaluated, and revised annually, in accordance with district policy, by the superintendent with the assistance of the district-level committee.

The purpose of the district improvement plan is to guide the LEA and campus staff in the improvement of performance for all groups in order to attain state standards with respect to the student achievement indicators.

The district improvement plan must include provisions for:

- A comprehensive needs assessment addressing the LEA's performance on the student achievement indicators and other appropriate measures of performance, that are disaggregated by all groups served by the LEA, including categories of ethnicity, socioeconomic status, sex, and populations served by special programs, including in student's special education programs;
- Measurable LEA performance objectives for all appropriate populations, including students in special education programs, and other measures of performance that may be identified through the comprehensive needs assessment;
- Strategies for improvement of performance that include:
  - Instructional methods for addressing the needs of groups not achieving their full potential;
  - Methods for addressing the needs of students for special programs, such as suicide prevention, conflict resolution, violence prevention, or dyslexia, treatment programs;
  - Dropout reduction;
  - Integration of technology in instructional and administrative programs;
  - Discipline management;
  - Staff development for professional staff of the LEA;
  - Career education to assist in developing the knowledge, skills, and competencies necessary for a broad range of career opportunities; and
  - Accelerated education.

- Strategies for providing to middle school, junior high school, and high school students teachers and counselors, and parents information about:
  - Higher education admission and financial aid opportunities;
  - The Toward Excellence, Access, and Success (TEXAS) Grant Program and the Teach for Texas Grant Program established;
  - The need for students to make informed curriculum choices to be prepared for success beyond high school; and
  - Sources of information on higher education admissions and financial aid;
- Resources needed to implement identifies strategies;
- Staff responsible for ensuring the accomplishment of each strategy;
- Timelines for ongoing monitoring of the implementation of each improvement strategy; and
- Formative evaluation criteria for determining periodically whether strategies are resulting in intended improvement of performance; and
- The policy advising sexual abuse and other maltreatment of students.

At least every two years, each LEA must evaluate the effectiveness of the district's decision-making and planning policies, procedures, and staff development activities related to LEA and it's decision-making and planning to ensure that they are effectively structured to positively impact performance.

Each district-level committee must hold at least one public meeting per year:

- The required meeting must be held after receipt of the annual district performance report for the TEA for the purpose of discussing the performance of the district and the district performance objectives; and
- Policies and procedures must be established to ensure that systematic communications measures are in place to periodically obtain broad-based community, parent, and staff input and to provide information to those persons regarding the recommendations of the district-level committee.

Each superintendent must regularly consult the district-level committee in the planning, operation, supervision, and evaluation of the LEA educational program.

### **Campus Improvement Plan**

*TEC 11.251; 11.253(a)(b)(d)(e)(g)(h); TEC 29.053*

Each LEA must maintain current policies and procedures to ensure that effective planning and site-based decision-making occur at each campus to direct and support the improvement of performance for all students.

Each LEA's policies and procedures must establish campus-level planning and decision-making committees.

Each school year, the principal of each school campus, with the assistance of the campus-level committee, must develop, review, and revise the campus improvement plan for the purpose of improving performance for all populations, including students in special education programs, with

respect to the student achievement indicators and any other appropriate performance measures for special needs populations.

Each campus plan must:

- Assess the academic achievement for each student in the school using the student achievement indicator system;
- Set the campus performance objectives based on the student achievement indicator system, including objectives for special needs populations, including students in special education programs;
- Identify how the campus goals will be met for each student;
- Determine the resources needed to implement the plan;
- Identify the staff needed to implement the plan;
- Set timelines for reaching the goals;
- Measure progress toward the performance objectives periodically to ensure that the plan is resulting in academic improvement;
- Include goals and methods for violence prevention and intervention on campus;
- Provide for a program to encourage parental involvement at the campus; and
- Set goals and objectives for the coordinated health program.

In accordance with the LEA's administrative procedures, the campus-level committee must be involved in decisions in the areas of planning, budgeting, curriculum, staffing patterns, staff development, and school organization.

The campus-level committee must approve the portions of the campus plan addressing the campus staff development needs.

Each campus-level committee must hold at least one public meeting per year:

- The required meeting must be held after receipt of the annual campus rating from the agency to discuss their performance of the campus and the campus performance objectives; and
- District policy and campus procedures must be established to ensure that the systematic communication measures are in place to periodically obtain broad-based community, parent, and staff input, and to provide information to those persons regarding their recommendations of the campus-level committees.

Each principal must regularly consult with the campus-level committee in the planning, operation, supervision, and evaluation of the campus educational program.

## **Parent Notification and Personal Graduation Plan**

*Authorities: Texas Education Code 28.0212(a)(b)(d)(e)(g), 28.022(a)(1)(2), (b)(1), (c)(1)(2); TEC 39.0241, 39.023(a)(c)(e)(I), 39.302, 39.303(a), 39.034*

## **Notice to Parents of Unsatisfactory Performance and Reports to Parents**

*TEC 28.0022(a)(1-3)(b)(1)(c)(1-3); TEC 39.023(a)(c)(e)(I); 39.0241; 39.302; 39.303(a); 39.304*

The board policy of a LEA must:

- Provide for a conference between parents and teachers;
- Require the LEA, at least once every 12 weeks, to give written notice to a parent of a student's performance in each class or subject; and
- Require the LEA, at least once every three weeks, or during the fourth week of each nine-week grading period, to give written notice to a parent or legal guardian of the student's performance in a subject included in the foundation curriculum if the student's performance in the subject is consistently unsatisfactory, as determined by the LEA.

The notice to parents of students with unsatisfactory performance must:

- Provide for the signature of a student's parent, and;
- Be returned to the district.

The board policy regarding notice to parents of unsatisfactory performance does not apply to a student who:

- Is 18 years of age or older and who is living in a different resident than the student's parents;
- Is married; or
- Has had the disabilities of minority removed for general purposes.

The LEA where the student attends must provide a record of the comparisons of annual improvement of student achievement from one school year to the next in a written notice to the student's parent or other person standing in parental relationship.

For a student who failed to perform satisfactorily on a required state-mandated assessment, the LEA must include in the notice to the student's parent specific information relating to access to on-line educational resources at the appropriate assessment instrument content level, including released assessment instrument questions and answers.

## **Personal Graduation Plan**

*TEC 28.0212(a)(b)(1-4)(d)(e)1-2)(g)(1-2)*

A principal must designate a guidance counselor, teacher, or other appropriate individual to develop and administer a personal graduation plan for each student in a junior high, middle, or high school who requires a personal graduation plan.

A personal graduation plan must be developed for each student who:

- Does not perform satisfactorily on a statewide assessment of academic skills; or
- Is not likely to receive a high school diploma before the fifth school year following the student's enrollment in ninth grade, as determined by the LEA.

A personal graduation plan must:

- Identify educational goals for the student;
- Include diagnostic information, appropriate monitoring and intervention, and other evaluation strategies;
- Include an intensive program of instruction as described in the DIAGNOSIS AND PROGRAMS OF INSTRUCTION framework;

- Address participation of the student's parent or guardian, including consideration of the parent's or guardian's educational expectations for the student;
- Provide innovative methods to promote the student's advancement, including flexible scheduling, alternative learning environments, on-line instruction, and other interventions that are proven to accelerate the learning process and have been scientifically validated to improve learning and cognitive ability; and
- Meet the standards established by the TEA.

Each LEA is encouraged to establish for each student entering grade nine a personal graduation plan that identifies a course of study that:

- Promotes college and workforce readiness;
- Promotes career placement and advancement; and
- Facilitates the student's transitions from secondary to postsecondary education.

## **Closing the Gap**

*Authorities: 20 U.S.C. §§ 1400(c)(5)(F); 1413(f)(2)(A)(B); 34 C.F.R. Part 300.226(b)(1)(2) (c); Elementary and Secondary Education Act; Texas Education Code 29.053((d)(1)(2)(3), 29.088(a)(1)(2)(3),(b)(1)(A)(B)(2)(3)(4)(5), 29.090(a)(1)(2)(b)(1)(A)(3)(4)(5)(6)(7)(c)(1)(2)(d)*

## **Early Intervening Services**

*20 USC §1400(c)(5)(F), 1413(f)(2), 1413(f)(2)(A), 1413(f)(2)(B), 1413(f)(3) , 19 Texas Administrative Code (TAC) §89.1011, TEC §29.081(a)*

The education of students with disabilities can be made more effective by providing incentives for whole-school approaches, scientifically-based early reading programs, positive behavioral interventions and supports, and early intervening services to reduce the need to label students as disabled in order to address the learning and behavioral needs of such students.

In implementing coordinated early intervening services, the LEA may carry out activities that include:

- Professional development (which may be provided by entities other than the LEA) for teachers and other school staff to enable such personnel to deliver scientifically-based academic instruction and behavioral interventions, including scientifically-based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and
- Providing educational and behavioral evaluations, services, and supports, including scientifically-based literacy instruction.

The provision of early intervening services does not limit or create a right to a free appropriate public education (FAPE) under the IDEA.

Early intervening services may not delay appropriate evaluation of a student suspected of having a disability.

## **Bilingual Education Program**

*Texas Education Code §§29.053((d)(1)(2)(3), 29.088§§(a)(1)(2)(3),(b)(1)(A)(B)(2)(3)(4)(5), 29.090§§(a)(1)(2)(b)(1)(A)(3)(4)(5)(6)(7)(c)(1)(2)(d)*

Each LEA with an enrollment of 20 or more students with limited English proficiency in any language classification in the same grade level must offer a bilingual education or special language program.

Each LEA that is required to offer bilingual education and special language programs must offer the following for students with limited English proficiency:

- Bilingual education in kindergarten through the elementary grades;
- Bilingual instruction, instruction in English as a second language, or other transitional language instruction approved by the Texas Education Agency (TEA) in post-elementary grades through grade 8; and
- Instruction in English as a second language in grades 9 through 12.

## **After-School and Summer Intensive Mathematics Instruction Programs**

*TEC 29.088(a)(1-3)(b)(1)(A-B)(d)*

The LEA may provide an intensive after-school program or an intensive program during the period that school is recessed for the summer to provide mathematics instruction to:

- Students who are not performing at grade level in mathematics to assist those students in performing at grade level;
- Students who are not performing successfully in mathematics course in assist those students in successfully completing the course; or
- Other students as determined by the LEA.

Before providing a program of after school or summer intensive mathematics, the board of trustees of a LEA must adopt a policy for:

- Determining eligibility for participating in the program that;
  - Prescribes the grade level or course a student must be enrolled in to be eligible; and
  - Provides for considering teacher recommendations in determining eligibility.
- Ensuring that parents of or persons standing in parental relation to eligible students are provided notice of the program;
- Ensuring that eligible students are encouraged to attend the program;
- Ensuring that the program is offered at one or more locations in the district that are easily accessible to eligible students; and
- Measuring progress on completion of the program.

After-school and summer intensive mathematics instruction programs provided under this section must be paid for with funds appropriated for that purpose.

## **After-School and Summer Intensive Science Instruction Programs**

*TEC 29.090(a)(1-3)(b)(1-5)(d)*

A LEA may provide an intensive after-school program or an intensive program during the period that school is recessed for the summer to provide science instruction to:

- Students who are not performing at grade level in science to assist those students in performing at grade level;
- Students who are not performing successfully in a science course to assist those students in successfully completing the course; or
- Other students as determined by the LEA.

Before providing a program of after school or summer intensive science instruction program, the board of trustees of a LEA must adopt a policy for:

- Determining eligibility for participating in the program that:
  - Prescribes the grade level or course a student must be enrolled in to be eligible; and
  - Provides for considering teacher recommendations in determining eligibility.
- Ensuring that parents of or persons standing in parental relation to eligible students are provided notice of the program;
- Ensuring that eligible students are encouraged to attend the program;
- Ensuring that the program is offered at one or more locations in the district that are easily accessible to eligible students; and
- Measuring progress on completion of the program.

After-school and summer intensive science instruction programs provided under this section must be paid for with funds appropriated for that purpose.

### **Basic Skills Programs for High School Students**

*TEC 29.086(a)(b)(c)(1-2)(d); TEC 28.002*

The LEA may apply to the commissioner of education for funding of special programs for students in ninth grade who are at risk of not earning sufficient credit or who have not earned sufficient credit to advance to tenth grade and who fail to meet minimum skills levels established by the commissioner:

- The LEA may with the consent of a student's parent or guardian, assign a student to a basic skills program; and
- A basic skills program may not exceed 210 instructional days.

A basic skills program must:

- Emphasize basic skills in areas or required curriculum;
- Offer students the opportunity to increase credits required for high school graduation under state or local LEA policy;
- Comply with minimum levels of student enrollment standards of student progress established by the commissioner;
- Include criteria that permit measurement of student progress;
- Annually evaluate the progress of students in the program; and
- Submit the results of the evaluation to the commissioner at the end of the school year.

### **Life Skills Programs for Student Parents**

*TEC 29.085(a)(b)(1-7)(c)(d)*

The LEA may provide an integrated program of educational and support services for students who are pregnant or who are parents.

The LEA must solicit recommendations for obtaining community support for the students and their children from organizations for parents or students in the LEA and from other community organizations.

The program must include:

- Individual counseling, peer counseling, and self-help programs;
- Career counseling and job readiness training;
- Day-care for the students' children on the campus or at a day-care facility in close proximity to the campus;
- Transportation for children of students to and from the campus or day-care facility;
- Transportation for students, as appropriate, to and from the campus or day-care facility;
- Instruction related to knowledge and skills in child development, parenting, and home and family living; and
- Assistance to students in the program in obtaining available services from government agencies or community service organizations, including prenatal and postnatal health and nutrition programs.

LEAs may operate SHARED SERVICES ARRANGEMENTS for a life skills program for student parents.

## **Dyslexia Services**

*Authorities: Texas Education Code; 19 TAC, Chapter 74 §74.28(a)(b)(c)f)(g(h); TEC §38.003(a)(b)(d)(1)(2)*

"Dyslexia" means a disorder of constitutional origin manifested by a difficulty in learning to read, write, or spell, despite conventional instruction, adequate intelligence, and sociocultural opportunity.

"Related disorders" include disorders similar to or related to dyslexia, such as developmental auditory imperceptions, dysphasia, specific developmental dyslexia, developmental dysgraphia, and developmental spelling disability.

Because early intervention is critical, a process for early identification, intervention, and support for students with dyslexia and related disorders must be available in each LEA as outlined in *The Dyslexia Handbook Procedures Concerning Dyslexia and Related Disorders*.

The LEA's strategies for screening dyslexia and related disorders must be implemented in accordance with the *The Dyslexia Handbook Procedures Concerning Dyslexia and Related Disorders*.

Screening should only be done by individuals or professionals that are trained to assess students for dyslexia and related disorders.

Students enrolling in public schools in this state will be tested for dyslexia and related disorders at appropriate times in accordance with a program approved by the State Board of Education (SBOE).

The board of trustees of the LEA must ensure that procedures for identifying a student with dyslexia or a related disorder are implemented.

Before an identification or assessment procedure is used selectively with an individual student, the LEA must notify the student's parent or guardian or another person standing in parental relation to the student.

In accordance with the program approved by the SBOE, the board of trustees of each LEA will provide for the treatment of any student determined to have dyslexia or a related disorder.

- The LEA's techniques for treating dyslexia and related disorders must be implemented in accordance with *The Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders*.

The LEA must purchase or develop its own reading program:

- For students with dyslexia and related services; and
- That is characterized by the descriptors found in *The Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders*.

For students eligible under the Section 504 of the Rehabilitation Act of 1973, the LEA must inform the student's parent or guardian of all services and options available to the student under that federal statute.

With respect to the location of the services:

- Each LEA must provide each identified student access at the student's campus to the services of a teacher trained in dyslexia and related disorders;
- The LEA may, with the approval of each student's parents or guardians, offer additional services at a centralized location; and
- Such centralized services must not preclude each student from receiving services at the student's campus.

Unless otherwise provided by law, a student determined to have dyslexia during testing or accommodated because of dyslexia may not be retested for dyslexia for the purpose of reassessing the student's need for accommodations until the LEA reevaluates the information obtained from previous testing of the student.

Each LEA must provide a parent education program for parents and guardians of students with dyslexia and related disorders, including:

- Awareness of characteristics of dyslexia and related disorders;
- Information on testing and diagnosis of dyslexia;
- Information on effective strategies for teaching students with dyslexia and related disorders; and
- Awareness of information on modification, especially modifications allowed on standardized testing.

- Teachers who screen and treat students with dyslexia and related disorders must be trained in instructional strategies which utilize individualized, intensive, multisensory, phonetic methods, and a variety of writing and spelling components described in *The Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders*.

## **Mental Health Considerations**

*Authorities: 20 U.S.C. § 1412; 21 U.S.C. § 812 Schedules I, II, III, IV and V; 34 C.F.R. Part 300; Texas Education Code; Texas Health and Safety Code*

### **Early Mental Health Intervention and Suicide Prevention**

*TX Health and Safety Code 161.325*

The board of trustees of each LEA may adopt a policy concerning early mental health intervention and suicide prevention.

Each LEA may select a program or programs appropriate for implementation from the TEA list of recommended best practice-based early mental health intervention and suicide prevention programs for implementation in public elementary, junior high, middle, and high schools within the general education setting.

### **Psychotropic Drugs and Psychiatric Evaluations and Examinations**

*TEC 38.016(a)(2)(A)(B)(b)(1-3)(c)(1-3); 34 CFR 300.174(a)(b); 21 USC 812(c) schedule I-IV; 20 USC 1412(a)(25)(A)*

“Psychotropic drug” means a substance that is:

- Used in the diagnosis, treatment, or prevention of a disease or as a component of a medication; and
- Intended to have an alerting effect on perception, emotion, or behavior.

The LEA employee may not:

- Recommend that a student use a psychotropic drug;
- Suggest any particular diagnosis;
- Use the refusal by a parent to consent to administration of psychotropic drug to a student or to a psychiatric evaluation or examination of a student as grounds, by itself, for prohibiting the student from attending a class or participating in a school-related activity; or
- Require a student to obtain a prescription for a substance covered by the Controlled Substances Act as a condition of attending school, receiving an evaluation, or receiving services under IDEA.

The above limitations do not:

- Prevent and appropriate referral for possible special education services.
- Prohibit the LEA employee who is a registered nurse, advanced nurse practitioner, physician, or certified or appropriately credentialed mental health professional from recommending that a student be evaluated by an appropriate medical practitioner; or
- Prohibit the LEA employee from discussing, consulting, or sharing any aspect of a student's behavior or academic progress including classroom-based observations with the student's parents or guardian or another LEA employee regarding a student's academic and functional

performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services.

## **Diagnosis and Programs of Instruction**

*Authorities: 42 U.S.C. § 11434a; Texas Education Code; Commissioner's List of Reading Instruments; Texas Education Agency (TEA) Correspondence*

### **Reading Diagnosis**

*TEC 28.006(a)(1)(c)(1)(g)(h); TEC 39.023(a)*

If the commissioner of education certifies that funds have been appropriated, each LEA must comply with the state requirements for reading diagnosis, including:

- Administering, at kindergarten and first and second grade, a reading instrument on the list adopted by the commissioner or by the district-level committee that is based on scientific research concerning reading skills development and reading comprehension;
- Administering at the beginning of the seventh grade a reading instrument adopted by the commissioner to each student whose performance on the state-mandated assessment in reading administered to the student in sixth grade did not demonstrate reading proficiency, as determined by the commissioner;
- Administering the reading instrument in accordance with the commissioner's recommendations;
- Reporting, in writing, to a student's parent or guardian the student's results on the reading instrument;
- Notifying the parent or guardian of each student in kindergarten or first or second grade who is determined, on the basis of reading instrument results, to be at risk for dyslexia or other reading difficulties, making a good faith effort to ensure that the notice is:
  - Provided either in person or by regular mail;
  - Clear and easy to understand; and
  - Written in English and in the parent or guardian's native language.
- Implementing an accelerated reading instruction program that provides reading instruction that addresses reading deficiencies to those students who have been determined to be at risk for dyslexia and other reading difficulties.
- Determining the form, content, and timing of the accelerated reading program; and
- Providing additional reading instruction and intervention to each student in grade 7 assessed as part of reading diagnosis, as appropriate to improve the student's reading skills in the relevant areas identified through the assessment instrument.

### **Math Diagnosis**

*TEC 28.007*

The LEA may use assessment instruments developed by the commissioner or contracted for development by the commissioner to diagnose the student's mathematic skills.

### **Tutorial Services**

*TEC 29.084(a)(b)(c);*

Each LEA may provide tutorial services at the LEA's schools.

The LEA that provides tutorial services must require a student whose grade in a subject for a grade reporting period is lower than the equivalent of 70 on a scale of 100 to attend tutorials.

The LEA that provides tutorial services may provide transportation for a student who is required to attend tutorial services and who is eligible for regular transportation services.

### **Compensatory, Intensive, and Accelerated Instruction**

*TEC 28.0213(a)(b)(1)(B)(c)(d)(1-13); TEC 29.081(c)(d)(1,11-13)(e)(1-5)*

The LEA must offer an intensive program of instruction to a student who does not perform satisfactorily on a statewide assessment of academic skills.

The LEA must design the intensive program of instruction to:

- Enable the student to:
  - Perform at the student's grade level at the conclusion of the next regular term, to extent practicable; or
  - Attain a standard of annual growth specified by the LEA and reported by the district to the TEA; and
- Carry out the purpose of the Student Success Initiative, if applicable.

The LEA must use funds appropriated by the legislature for an intensive program of instruction to plan and implement intensive instruction and other activities aimed at helping a student satisfy state and local high school graduation requirements.

The school's determination of the appropriateness of a program for a student under this section is final and does not create a cause of action.

Each LEA must use the performance data resulting from the basic skills assessment instruments and achievement tests administered as part of the statewide assessment of academic skills to design and implement appropriate compensatory, intensive, or accelerated instructional services that enable the students to be performing at grade level at the conclusion of the next regular school term.

Each LEA must provide accelerated instruction to a student enrolled in the LEA who:

- Has taken an end-of-course assessment instrument administered under the statewide assessment of academic skills and has not performed satisfactorily on the assessment instrument; or
- Is at risk of dropping out of school.

The term "student at risk of dropping out of school" includes each student who is under 21 years of age and who:

- Was not advanced from one grade level to the next for one or more school years;
- If the student is in grade 7, 8, 9, 11 or 12, did not maintain an average equivalent to 70 on a scale of 100 in two or more subjects in the foundation curriculum during a semester in the preceding or current school year, or is not maintaining such an average in two or more subjects in the foundation curriculum in the current semester;

- Did not perform satisfactorily on an assessment instrument administered to the student as part of the statewide assessment of academic skills, and who has not in the previous or current school year subsequently performed on that instrument or another appropriate instrument at a level equal to at least 110% of the level of satisfactory performance on that instrument;
- If the student is in prekindergarten (Pre-K), kindergarten, or grade 1, 2, or 3, did not perform satisfactorily on a readiness test or assessment instrument administered during the current school year;
- Is pregnant or is a parent;
- Has been placed in a disciplinary alternative education program during the preceding or current school year;
- Has been expelled during the preceding or current school year;
- Is currently on parole, probation, deferred prosecution, or other conditional release;
- Was previously reported through the Public Education Information Management System to have dropped out of school;
- Is a student of limited English proficiency;
- Is in the custody or care of the Department of Family and Protective Services (formerly known as Department of Protective and Regulatory Services) or has, during the current school year, been referred to the department by a school official, officer of the juvenile court, or law enforcement official;
- Is homeless; or
- Resided in the preceding school year or resides in the current school year in a residential placement facility in the LEA, including a detention facility, substance abuse treatment facility, emergency shelter, psychiatric hospital, halfway house, or foster group home.

A student is not considered a student at risk of dropping out of school if the student did not advance from Pre-K or kindergarten to the next grade level only as the result of the request of the student's parent.

Each LEA must evaluate and document the effectiveness of the accelerated instruction in reducing any disparity in performance on statewide assessments of academic skills, or disparity in the rates of high school completion between students at risk of dropping out of school and all other LEA students.

The LEA may use a private or public community-based dropout recovery education program to provide alternative education programs for students at risk of dropping out of school that must:

- Provide not less than four hours of instructional time per day;
- Employ as faculty and administrators persons with baccalaureate or advanced degrees;
- Provide at least one instructor for each 28 students;
- Perform satisfactorily according to performance indicators and accountability standards adopted for alternative education programs by the commissioner; and
- Comply with the state requirements and rules for compensatory education programs.

## **Reading Academy for Teachers**

*TEC 21.4551(c); TEC 39.023(a); TEC 39.054(e)*

A teacher is required to attend a reading academy if the teacher provides instruction in reading, mathematics, science, or social studies to students in sixth, seventh, or eighth grade at a campus that fails to satisfy any standard under the TEA's standards for evaluating campus performance on the basis of performance on the state-mandated reading assessment instrument administered to students in any grade level at the campus.

## **Mentoring Services Program**

*TEC 29.081; 29.09(a)(c)(d)*

Each LEA may provide a mentoring services program to students at risk of dropping out of school.

The board of trustees of the LEA must obtain the consent of a student's parent or guardian before allowing the student to participate in the program.

The board of trustees of the LEA may arrange for any public or nonprofit community-based organization to come to the LEA's schools and implement the program.

## **Referral for Possible Special Education Services**

*Authorities: 20 U.S.C. §§ 1414, 1415, 6368; 34 C.F.R. Part 300; Texas Education Code; 19 T.A.C. Chapters 89*

### **Information Concerning Special Education of Children with Learning Difficulties**

*TEC 26.0081(c); TAC 89.1011;*

The Texas Education Agency will produce and provide to the local educational agencies (LEAs) a written explanation of the options and requirements for providing assistance to children who have learning difficulties or who need or may need special education.

The explanation must state that a parent is entitled at any time to request an evaluation of the parent's child for special education services;

Each school year, each LEA must provide the written explanation to a parent of each child in the LEA by including the explanation in the student handbook or by another means.

Referral of children for a FULL AND INDIVIDUAL EVALUATION for possible special education services must be a part of the LEA's overall, general education referral or screening system.

### **Referral for Full and Individual Evaluation**

*34 CFR 300.301(b); 300.303; 300.304; 300.305; 300.306; 300.503(a); 300.309(b)(1)(c)(1-2); 2-USC 1414(a)(1)(B)(D)(i)(I)*

Either the parent of the child, a state educational agency, an LEA, an educational service agency (ESA), or a nonprofit public charter school that is not otherwise included as and not a school of an LEA or ESA, and any other political subdivision of the state that is responsible for providing education to children with disabilities may initiate a request for an initial evaluation to determine if the child is a child with a disability.

The LEA must accept a referral for special education services made for the child in substitute care by a school previously attended by the child.

The LEA must provide prior written notice to the parent whenever it proposes or refuses to evaluate a child.

Before conducting an initial full and individual evaluation, the LEA must obtain from the parent consent for initial evaluation.

The LEA must promptly request consent for evaluation whenever a child is referred for an evaluation for specific learning disability and if, prior to referral, a child has not made adequate progress after an appropriate period of time when provided instruction as follows:

- Appropriate instruction in regular education settings delivered by qualified personnel as demonstrated by the data; and
- With data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

For a specific learning disability, the timelines for evaluation described in evaluation procedures may be extended by mutual written agreement of the child's parents and the group of qualified professionals described in the Specific Learning Disability section of the framework.

A determination of eligibility must not be made if the determinant factor for the determination is lack of appropriate instruction in reading, including in the essential components of reading instruction, lack of appropriate instruction in math, or limited English proficiency.

To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group of qualified professionals, as part of the full and individual evaluation must consider:

- Data that demonstrate that prior to, or as part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
- Data-based documentation of repeated assessments of achievement of progress during instruction, which was provided to the child's parents.

## **Ages 0-5**

*Authorities: 20 U.S.C. §§ 1401, 1412, 1414, 1435, 1436, 1437; 34 C.F.R. Part 300; Texas Education Code; 19 T.A.C. Chapter 89; Auditory Impaired/Visually Impaired Memorandum of Understanding between the Interagency Council on Early Childhood Intervention and Texas Education Agency (AI/VI MOU ECI & TEA)*

The LEA must comply with the Child Find guidelines.

## **Age Ranges for Eligibility**

*34 CR 300.101(a); TAC 89.1035(a)(b); TEC 29.003(b); 20 USC 1412(a)(1)(A)*

The LEA must ensure that FAPE is made available to all eligible children with disabilities ages three through 21.

The LEA must ensure that a FAPE is made available from birth to children with visual or auditory impairments:

- The LEA must comply with the Visual Impairment guidelines;
- The LEA must comply with the auditory Impairment guidelines; or
- The LEA must comply with the deaf-blindness guidelines.

### **Noncategorical Early Childhood**

A child between the ages of three through five may be described as eligible for special education services based on NONCATEGORICAL EARLY CHILDHOOD if criteria are met.

### **Individualized Family Services Plan (IFSP)**

*20 USC §1401(15), 1414(d)(2)(B), 1436(d), 19 TAC §89.1050(b)*

For a child from birth through two years of age with a visual impairment and/or an auditory impairment, an IFSP meeting must be held in place of an ARD committee meeting.

IFSP has the meaning given the term in the IDEA, Part C.

The LEA must ensure the IFSP contains:

- A statement of the infant's or toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria;
- A statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's infant or toddler with a disability;
- A statement of the measurable results or outcomes expected to be achieved for the infant or toddler and the family, including pre-literacy and language skills, as developmentally appropriate for the child, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the results or outcomes is being made and whether modifications or revisions of the results or outcomes or services are necessary;
- A statement of specific early intervention services based on peer-reviewed research, to the extent practicable, necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services;
- A statement of the natural environments in which early intervention services will appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;
  - The appropriate instructional arrangement for children from birth through the age of two with visual and/or auditory impairments must be determined in accordance with the IFSP, current attendance guidelines, and the Auditory Impaired/Visually Impaired Memorandum of Understanding between the Interagency Council on Early Childhood Intervention (ECI) and the TEA;
- Home instruction may be used for services to infants and toddlers (zero through two) when determined appropriate by the child's IFSP committee;
- The projected dates for initiation of services and the anticipated length, duration, and frequency of the services;

- The identification of the service coordinator from the profession most immediately relevant to the infant's, toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under Part C) who will be responsible for the implementation of the plan and coordination with other agencies and persons, including transition services; and
- The steps to be taken to support the transition of the toddler with a disability to preschool or other appropriate services.

## **Transition from Part C Early Childhood Intervention (ECI) to Part B Preschool Programs**

*20 USC §1412(a)(9), 1414(d)(1)(D), 1435(a)(10), 1437(a)(9)(A)(ii)*

For children participating in ECI programs assisted under IDEA Part C, and who will participate in preschool programs assisted under IDEA Part B, the ECI and the LEA are responsible for ensuring a smooth and effective transition to those preschool programs.

The ECI lead agency must:

- Notify the LEA for the area in which such a child resides that the child will shortly reach the age of eligibility for preschool services under Part B; and
- In the case of a child who may be eligible for such preschool services:
  - With the approval of the family of the child; and
  - Convene a conference among the lead agency, the family, and the LEA not less than 90 days (and at the discretion of all such parties, not more than nine months) before the child is eligible for the preschool services, to discuss any such services that the child may receive.

By the third birthday of such a child, an IEP or IFSP must be developed and implemented by the LEA for the child.

The LEA will participate in transition planning conferences arranged by the designated lead agency.

In the case of a child who was previously served under IDEA Part C, an invitation to the initial ARD committee meeting must, at the request of the parent, be sent to the IDEA Part C service coordinator or other representatives of the IDEA Part C system to assist with the smooth transition of services according to the ARD Committee Membership and Prior Written Notice guidelines.

## **Individualized Education Program (IEP)**

*34 CFR 300.101(b); TAC 89.1035(a); 89.63(c)(2)(B)*

The LEA must ensure that an IEP be in effect for eligible children with disabilities on their third birthday in compliance with the ARD Committee guidelines.

If a child's third birthday occurs during the summer, the child's ARD committee must determine the date when services will begin.

The ARD committee must comply with the Least Restrictive Environment guidelines.

## Dual Enrollment

*19 TAC §89.1096(c)*

Dual enrollment is when a parent of a child with a disability enrolls the child in both the public and private school.

To dually enroll, the child must meet the age requirements set forth in the Private Schools guidelines.

When a parent wishes to dually enroll his or her eligible child, the LEA must comply with the Private Schools guidelines.

## Parent

*Authorities: 20 U.S.C. §§ 1401, 1415; 42 U.S.C. § 11434; 34 C.F.R. Parts 99, 300; Texas Education Code; 19 T.A.C. Chapter 89*

For an adult student, the LEA must comply with the Adult Student guidelines.

For a child who is incarcerated in an adult or juvenile, state or local correctional institution, the LEA must comply with the Incarcerated Students guidelines.

The LEA must comply with the Records guidelines, as applicable.

## Identification of Parent

The term "parent" means:

- A biological or adoptive parent of a child;
- A foster parent of a child who meets the requirements set forth below;
- A guardian (but not the state if the child is a ward of the state);
- An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
- An individual assigned to be a surrogate parent.

## Requirements for Foster Parent to Serve as Parent

*19 Texas Administrative Code (TAC) §89.1047(a)(1), 89.1047(b)(1), 89.1047(b)(2), Texas Education Code (TEC) §29.015(b), 29.015(b)(1), 29.015(b)(2), 29.015(b)(3)(A), 29.015(b)(3)(B), 29.015(b)(4)*

A foster parent may serve as a parent of a child with a disability if the following criteria are met:

- The Department of Family and Protective Services (DFPS) is appointed as the temporary or permanent managing conservator of the child;
- The child has been placed with the foster parent for at least 60 days;
- The foster parent agrees to participate in making educational decisions on the child's behalf;
- The foster parent has no interest that conflicts with the child's interests; and
- The foster parent agrees to complete a training program for surrogate parents that complies with the training program requirements of this section.

The LEA should provide or arrange for the provision of the training program prior to assigning a foster parent to act as a parent but no later than 90 calendar days after assignment.

### **Appointment of a Surrogate Parent**

*20 USC §1415(b)(2)(A), 1415(b)(2)(B), 42 USC §11434a(6), 34 Code of Federal Regulations (CFR) part 300.519(a), 300.519(a)(1), 300.519(a)(2), 300.519(a)(3), 300.519(a)(4), 300.519(c), 300.519(d)(2), 300.519(d)(2)(i), 300.519(d)(2)(ii), 300.519(d)(2)(iii), 300.519(h), 19 TAC §89.1047(a)(1), 89.1047(a)(3), 89.1047(a)(4), TEC §29.001(10), 29.001(10)(A), 29.001(10)(B), 29.001(10)(C), 29.001(10)(D), 29.001(10)(E), 29.001(10)(F)*

The LEA must make reasonable efforts to appoint a surrogate parent not more than 30 days after there is a determination that the child needs a surrogate parent unless, alternatively, the judge overseeing the child's care appoints the surrogate.

Unless appointed by the judge overseeing the child's care, the LEA must appoint a surrogate parent whenever:

- The parents of the child are not known;
- The LEA cannot, after reasonable efforts, locate the parents;
- The child is a ward of the state; or
- The child is an unaccompanied homeless youth.

The LEA must ensure that a person selected as a surrogate parent is not:

- An employee of the TEA;
- An employee of the LEA;
- An employee of any other agency that is involved in the education or care of the child; or
- A person with a personal or professional interest that conflicts with the interest of the child the surrogate parent represents.

The LEA must require the surrogate parent to:

- Visit the child and the child's school;
- Consult with persons involved in the child's education, including teachers, caseworkers, court-appointed volunteers, guardians ad litem, attorneys ad litem, foster parents, and caretakers;
- Review the child's educational records;
- Attend meetings of the child's ARD Committee;
- Exercise independent judgment in pursuing the child's interests; and
- Complete a training program within 90 days of assignment as a surrogate parent.

### **Training Program**

*34 CFR part 300.519(d)(2)(iii), 19 TAC §89.1047(a)(1), 89.1047(a)(1)(A), 89.1047(a)(1)(B), 89.1047(a)(1)(C), 89.1047(a)(1)(D), 89.1047(a)(1)(E), 89.1047(a)(1)(F), 89.1047(a)(1)(G), 89.1047(a)(1)(H), 89.1047(a)(2), 89.1047(a)(3), 89.1047(a)(4), TEC §29.001(10)(A)*

The required training program must provide the individual with an explanation of the provisions of federal and state laws, rules, and regulations relating to:

- The identification of a child with a disability (see the Child Find guidelines);

- The collection of evaluation and reevaluation data relating to a child with a disability (see the Full and Individual Evaluation sections);
- The ARD Committee process;
- The development of an IEP and, for a child who is at least 16 years of age, Transition Services;
- The determination of least restrictive environment;
- The implementation of an IEP (see the ARD Committee sections);
- The Procedural Safeguards; and
- The sources that the surrogate parent may contact to obtain assistance in understanding the provisions of federal and state laws, rules, and regulations relating to children with disabilities.

The surrogate parent training program must be provided in the native language or other mode of communication used by the individual who is to serve as a surrogate parent.

Once an individual has completed a training program, the individual must not be required by any LEA to complete additional training in order to continue serving as the child's surrogate parent or to serve as the surrogate parent for other children with disabilities.

LEAs may provide ongoing or additional training to surrogate parents and/or parents; however, the LEA cannot deny an individual who has received the required training from serving as a surrogate parent on the grounds that the individual has not been trained.

### LEA Specific Information:

LPISD Special Education Department 830-365-4005

## **Adult Student**

*Authorities: 20 U.S.C. § 1415; 34 C.F.R. Parts 99 and 300; Texas Education Code; 19 T.A.C. Chapter 89*

Beginning not later than one year prior to the child reaching the age of 18, the LEA must comply with the Transition Services guidelines.

For an adult student who is incarcerated in an adult or juvenile, state or local correctional institution, the LEA must comply with the Incarcerated Students guidelines.

## **Transfer of Parental Rights at Age of Majority**

*34 CFR 300.625(b)(c); 300.520(a)(1)(ii); 20 USC 1415(m)(1)(A); 34 CFR 99.32(a)(8); TAC 89.1049(e)*

When a child with a disability reaches 18 years old (except for a child who has been determined to be incompetent under state law):

- All rights under the IDEA transfer from the parent to the adult student;
  - except that the LEA must provide any notice required under the IDEA to both the adult student and the parents; and
- All rights under FERPA transfer from the parent to the adult student;

- except that consent is not required to disclose information to the parent of an adult student if the student is a dependent student, or another when the consent is not required to disclose information exception applies.

An adult student who holds rights under the IDEA is not prohibited from executing a valid power of attorney.

### **Notification of the Transfer of Rights**

*20 USC §1415(m)(1); 34 CFR part 300.520(a)(3); 19 TAC §89.1049(c); TEC §29.017(c)*

The LEA must notify the adult student and the parents of the transfer of rights, including a statement:

- That parental rights have transferred to the adult student; and
- Of contact information for the parties to use in obtaining additional information.

### **Right to Notice Following a Transfer of Rights**

*20 USC §1415(m)(1)(A); 300 CFR part 300.520(a)(1)(i); 19 TAC §89.1049(a), 89.1049(d); TEC §29.017(a)*

Following a transfer of rights, the LEA must provide any notice required by the IDEA to both the adult student and the parents; however:

- A prior written notice of an ARD committee meeting does not constitute an invitation to, or create a right for, the parent to attend the meeting;
- Prior written notice given to an adult student and parent does not create a right for the parent to consent or participate in the proposal or refusal to which the notice relates.

### **Parent Attendance at the ARD Meeting Following a Transfer of Rights**

*TAC 89.1049(d)*

Regarding ARD Committee Membership, the adult student or LEA may invite individuals who have knowledge or special expertise regarding the adult student, including the parent, to be a member of the ARD committee.

## **Full and Individual Evaluation**

### **Review of Existing Evaluation Data (REED)**

*Authorities: 20 U.S.C. § 1414; 34 C.F.R. Part 300*

#### **Federal and State Requirements**

*20 United States Code (USC) §1414(a)(1)(E), 1414(c)(1)(A), 1414(c)(1)(B), 1414(c)(2), 300 CFR part 300.302, 300.305(a), 300.305(a)(1), 300.305(a)(1)(i), 300.305(a)(1)(ii), 300.305(a)(1)(iii), 300.305(a)(2), 300.305(a)(2)(i)(A), 300.305(a)(2)(i)(B), 300.305(a)(2)(ii), 300.305(a)(2)(iii)(A), 300.305(a)(2)(iii)(B), 300.305(a)(2)(iv), 300.305(b), 300.305(c)*

The screening of a child by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not considered to be an evaluation for eligibility for special education and related services.

A REED is required as part of an initial evaluation, if appropriate, and as part of any reevaluation.

The REED must be conducted by the ARD members (see the ARD Committee Membership guidelines) and other qualified professionals, as appropriate.

The ARD committee members may conduct its review without a meeting.

The ARD committee members must review existing evaluation data on the child, including:

- Evaluations and information provided by the parents of the child;
- Current classroom-based, local, or state assessments, and classroom-based observations; and
- Observations by teachers and related services providers.

On the basis of that review, and input from the child's parents, the ARD committee members must identify what additional data, if any, are needed to determine:

- Whether the child is a child with a disability, and the educational needs of the child, or, in case of a reevaluation of a child, whether the child continues to have such a disability and the educational needs of the child;
- Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services;
- The present levels of academic achievement and related developmental needs of the child; and
- Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

The LEA must administer such assessments and other evaluation measures as may be needed to produce the data identified by the REED according to the Evaluation Procedures section of this document:

- The LEA must comply with the Prior Written Notice section, as appropriate; and
- The LEA must comply with the Consent sections, as appropriate.

### **Requirements if Additional Data are NOT Needed**

*20 USC §1414(c)(4), 300 Code of Federal Regulations (CFR) part 300.305(d)(1), 300.305(d)(1)(i), 300.305(d)(1)(ii), 300.305(d)(2)*

If no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs, the LEA must notify the child's parents of:

- That determination and the reasons for the determination; and
- The right of the parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child's educational needs.

The LEA is not required to conduct such an assessment unless requested to by the child's parents.

## **Evaluation Procedures**

*Authorities: 20 U.S.C. § 1414; 34 C.F.R. Part 300; Texas Education Code; 19 TAC Chapter 89*

## Federal and State Requirements

The LEA must comply with the Review of Existing Evaluation Data section.

The LEA must comply with the Prior Written Notice section.

The LEA must comply with the Consent section.

## Group of Qualified Professionals

*20 USC §1414(b)(4)(A); 34 CFR part 300.306(a)(1); 19 TAC §89.1040(b), 89.1040(b)(1), 89.1040(b)(2)*

The group that collects or reviews evaluation data must include, but is not limited to the following members:

- A licensed specialist in school psychology;
- An educational diagnostician;
- Other appropriately certified or licensed practitioner with experience and training in the area of the disability; or
- A licensed or certified professional for a specific eligibility category as specified in the applicable specific eligibility category framework(s) of Full and Individual Evaluation.

## Evaluation Procedures

*20 USC §1414(b)(2), 1414(b)(2)(A), 1414(b)(2)(B), 1414(b)(2)(C), 1414(b)(3), 1414(b)(3)(A), 1414(b)(3)(A)(i), 1414(b)(3)(A)(ii), 1414(b)(3)(A)(iii), 1414(b)(3)(A)(iv), 1414(b)(3)(A)(v), 1414(b)(3)(B), 1414(b)(3)(C), 34 CFR part 300.29, 300.304(b)(1), 300.304(b)(1)(i), 300.304(b)(1)(ii), 300.304(b)(2), 300.304(b)(3), 300.304(c), 300.304(c)(1), 300.304(c)(1)(i), 300.304(c)(1)(ii), 300.304(c)(1)(iii), 300.304(c)(1)(iv), 300.304(c)(1)(v), 300.304(c)(2), 300.304(c)(3), 300.304(c)(4), 300.304(c)(6), 300.304(c)(7); TEC §29.004(b), 29.310(a), 29.310(b); TAC §89.1230*

In conducting the evaluation, the LEA must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent that may assist in determining:

- Whether the child is a child with a disability; and
- The content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum, or, for preschool children, to participate in appropriate activities.

In conducting the evaluation, the LEA must:

- Not use any single measure or assessment as the sole criterion for determining whether the child is a child with a disability or determining an appropriate educational program for the child; and
- Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

The LEA must ensure that:

- Assessments and other evaluation materials used to assess a child under this framework:
  - Are selected and administered so as not to be discriminatory on a racial, cultural or sexual basis;
  - Are provided and administered:
    - In the child's native language or other mode of communication; and

- In the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer;
  - Are used for the purposes for which the assessments or measures are valid and reliable;
  - Are administered by trained and knowledgeable personnel; and
  - Are administered in accordance with any instructions provided by the producer of such assessments;
- Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient;
- Assessments and instruments are selected and administered so as to best ensure that the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those are the skills the test purports to measure);
- The child is assessed in all areas of suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;
- For a child with limited English proficiency, the LEA differentiates between language proficiency and disability;
- The evaluation is sufficiently comprehensive to identify all of the child's special education and related service's needs, whether or not commonly linked to the disability category in which the child has been classified; and
- Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child must be provided.

## Initial Evaluations

*20 USC §1414(a)(1)(A), 1414(a)(1)(C)(i), 1414(a)(1)(C)(ii), 34 CFR part 300.8(a)(1), 300.301(a), 300.301(c)(1), 300.301(c)(2), 300.301(c)(2)(i), 300.301(c)(2)(ii), 300.301(d)(1), 300.301(d)(2), 300.301(e)*

The LEA must conduct an initial Full and Individual Evaluation before the initial provision of special education and related services to a child with a disability.

The initial evaluation must consist of procedures to determine:

- Whether a child is a child with a disability; and
- The educational needs of such child.
- 

The initial evaluation must be conducted and the evaluation report completed within 60 days of receiving parental consent for the evaluation, unless:

- The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or
- The child transfers from one LEA to another when an evaluation is pending and the LEA complies with the Transfer Students section.

## Reevaluations

*20 USC §1414(a)(2)(A), 1414(a)(2)(B), 1414(c)(5)(A), 1414(c)(5)(B)(i); 34 CFR part 300.303(a), 300.303(a)(1), 300.303(a)(2), 300.303(b), 300.303(b)(1), 300.303(b)(2), 300.305(e), 300.305(e)(2)*

The LEA must ensure that a reevaluation of each child with a disability is conducted:

- If the LEA determines the educational or related service's needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
- If a reevaluation is requested by the child's parents or teacher; and
- Before determining that the child is no longer a child with a disability.

A reevaluation is not required (but a Summary of Performance is required) before the termination of a child's eligibility due to:

- Graduation from secondary school with a regular diploma, or
- Exceeding the age eligibility for a FAPE under state law.

A reevaluation must occur:

- Not more frequently than once a year, unless the parent and the LEA agree otherwise; and
- At least once every 3 years, unless the parent and the LEA agree that a reevaluation is unnecessary.

## **Summary of Performance**

*20 U.S.C. §1414; 34 C.F.R. Part 300; 19 T.A.C. Chapter 89*

### **Federal and State Requirements**

A summary of performance is required for:

- A child who meets the criteria for graduation is graduating; or
- A child whose eligibility for special education and related services terminates due to exceeding age eligibility.

### **Considerations**

*19 TAC §89.1070(e)*

The summary of performance must consider, as appropriate:

- The views of the parent;
- The views of the child; and
- Written recommendations from adult service agencies on how to assist the child in meeting postsecondary goals.

### **Elements of Summary of Performance**

*20 USC §1414(c)(5)(B)(ii) , 34 CFR part 300.305(e)(3)*

The LEA must provide the child with a summary of performance that contains:

- A summary of the child's academic achievement;
- A summary of the child's functional performance; and
- Recommendations on how to assist the child in meeting the child's postsecondary goals.

A full and individual evaluation must be provided and included as part of the summary of performance for children who meet the criteria for graduation due to successful completion of the IEP.

# Admission, Review and Dismissal (ARD) Committee

## Rule of Construction

*Authorities: 20 U.S.C. § 1414; 34 C.F.R. Part 300; Texas Education Code, T.A.C. Chapter 89  
20 United States Code (USC) §1414(b)(4), 1414(d)(1)(A)(i), 1414(d)(1)(A)(ii), 1414(d)(1)(B), 1414(e), 34 Code of Federal Regulations (CFR) part 300.116(a), 300.320(a), 300.320(d)(1), 300.320(d)(2), 300.321(a), 300.306(a)(1), 19 Texas Administrative Code (TAC) §89.1050(a)*

Each LEA must establish an ARD committee for each eligible child with a disability and for each child for whom an initial full and individual evaluation is conducted.

The ARD committee is the:

- IEP team defined in federal law;
- Group that determines whether the child is a child with a disability and the educational needs of the child; and
- Group that determines the educational placement of the child.

The term IEP means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with the ARD Committee guidelines.

Additional information need not be included in the child's IEP beyond what is explicitly required in the ARD Committee guidelines and in the TEA's model IEP form.

The ARD committee need not include information under one component of the child's IEP that is already contained under another component.

The ARD committee may use the TEA's model IEP form to comply with the ARD Committee guidelines.

## ARD Committee Membership

*Authorities: 20 U.S.C. §§ 1414, 2301; 34 C.F.R. Part 300; 19 T.A.C. Chapters 75, 89, 101  
20 USC §1414(d)(1)(B)(i), 1414(d)(1)(B)(ii), 1414(d)(1)(B)(iii), 1414(d)(1)(B)(iv), 1414(d)(1)(B)(iv)(I), 1414(d)(1)(B)(iv)(II), 1414(d)(1)(B)(v), 1414(d)(1)(B)(vi), 1414(d)(1)(B)(vii), 1414(d)(1)(C)(i), 1414(d)(1)(C)(ii), 1414(d)(1)(C)(ii)(I), 1414(d)(1)(C)(ii)(II), 1414(d)(1)(C)(iii), 1414(d)(3)(C), 1414(d)(4)(B), 2301, 34 CFR part 300, 18, 300.156, 300.320(a), 300.321(a)(1), 300.321(a)(2), 300.321(a)(3), 300.321(a)(4), 300.321(a)(4)(i), 300.321(a)(4)(ii), 300.321(a)(4)(iii), 300.321(a)(5), 300.321(a)(6), 300.321(a)(7), 300.321(b), 300.321(b)(3), 300.321(e)(1), 300.321(e)(2), 300.321(e)(2)(i), 300.321(e)(2)(ii), 300.321(f), 300.324(a)(3), 19 TAC §§75.1023(d)(1), , 89.1050(a) 89.1050(c)(1)(A), 89.1050(c)(1)(B), 89.1050(c)(1)(C), 89.1050(c)(1)(D), 89.1050(c)(1)(D)(i), 89.1050(c)(1)(D)(ii), 89.1050(c)(1)(D)(iii), 89.1050(c)(1)(E), 89.1050(c)(1)(F), 89.1050(c)(1)(G), 89.1050(c)(2), 89.1050(c)(3), 89.1050(c)(4)(A), 89.1050(c)(4)(B), 89.1050(c)(4)(C), 89.1050(c)(5), 89.1131(b)(3), 89.1131(b)(4), 89.1225(f)(4), 89.1225(k), 101.1009*

The ARD committee as described in Rule of Construction guidelines means a group of individuals composed of:

- The parents of a child with a disability as required by the Parent Participation guidelines;
- Not less than one regular education teacher of such child (if the child is, or may be, participating in the regular education environment):

- Who is a regular education teacher responsible for implementing a portion of the child's IEP; and
  - Who, as a member of the ARD committee, to the extent appropriate, participates in the development, review and revision of the individualized education program (IEP), including the determination of appropriate positive behavioral interventions and supports and other strategies for the child and supplementary aids and services, program modifications and supports for school personnel;
- Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of such child:
  - Who is appropriately certified or licensed;
- Who is appropriately certified or licensed;
  - Who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
  - Who is knowledgeable about the general education curriculum; and
  - Who is knowledgeable about the availability of resources of the LEA;
- An individual who can interpret the instructional implications of evaluation results:
  - Who may be one of the other members;
- Other individuals who have knowledge or special expertise regarding the child, at the discretion of the parent or the LEA:
  - Including related services personnel as appropriate;
  - Including, in the case of a child who was previously served under the Early Childhood Intervention (ECI) program, at the request of the parent, by invitation to the initial ARD meeting, the ECI service coordinator or other representatives of the ECI system to assist with the smooth transition of services; and
  - Including to the extent appropriate, with consent for disclosure of confidential information, a representative of any participating agency that is likely to be responsible for providing or paying for transition services;
- The child with a disability, whenever appropriate, when the purpose of the meeting will be the consideration of transition services and in compliance with the Adult Student guidelines;
- A teacher who is certified in the education of children with auditory impairments for a child with a suspected or documented auditory impairment including suspected or documented deaf-blindness;
- A teacher who is certified in the education of children with visual impairments for a child with a suspected or documented visual impairment including suspected or documented deaf-blindness;
- A member of the language proficiency assessment committee (LPAC) when determining participation in state and district-wide assessments for a child with limited English proficiency, to address the child's language needs; and
- A representative from Career and Technical Education (CTE), preferably the teacher when considering initial or continued placement of a child in CTE.

## **Attendance and Excusal**

*Authorities: 20 U.S.C. §§ 1414, 2301; 34 C.F.R. Part 300; 19 T.A.C. Chapters 75, 89, 101  
20 USC §1414(d)(1), 34 CFR part 300.321(e)*

Excusal procedures do not have to be followed for the following ARD committee members:

- The parent;
- The child with a disability; and
- Other individuals who have knowledge and special expertise regarding the child who attend at the discretion of the parent or the LEA.

A member is not required to attend (in whole or in part) if the member's area of the curriculum or related services is not being modified or discussed in the meeting and the following conditions are satisfied:

- The parent and the LEA agree:
  - The member's attendance is not necessary; and
  - The member's area of the curriculum or related services is not being modified or discussed in the meeting; and
- The parent's agreement is in writing.

When a required member's area of the curriculum or related services is being modified or discussed in the meeting, the required member may be excused from attending an ARD committee meeting (in whole or in part) if the following conditions are satisfied:

- The meeting involves a modification to or discussion of the member's area of the curriculum or related services;
- The parent and LEA consent to excuse a member from attending an ARD committee meeting;
- The parent's consent is in writing; and
- The member submits in writing to the parent and the ARD committee input into the development of the IEP prior to the meeting.

## **Parent Participation**

*Authorities: 20 U.S.C. § 1414; 34 C.F.R. Part 300; The Texas Education Code; 19 T.A.C. Chapter 89  
20 USC §1414(d)(1)(B)(i), 34 CFR part 300.322(a), 300.322(a)(1), 300.322(a)(2), 300.501(b)(1), 300.501(b)(2), 300.501(b)(3), 19 TAC §89.1015, 89.1045(b)*

The LEA must comply with the Prior Written Notice guidelines.

The LEA must take steps to ensure that the parent of a child with a disability is present at each ARD committee meeting or is afforded the opportunity to participate including:

- Notifying the parent of the meeting early enough to ensure that they will have opportunity to attend; and
- Scheduling the meeting at a mutually agreed on time and place.

A meeting does not include informal or unscheduled conversations involving LEA personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision.

A meeting does not include preparatory activities that LEA personnel engage in to develop a proposal or preparatory activities to develop a response to a parent proposal that will be discussed at a later meeting.

## **Other Methods to Ensure Parent Participation**

*34 CFR part 300.322(c), 300.328, 300.501(c)(3)*

If neither parent can attend the ARD committee meeting, the LEA must use other methods to ensure parent participation:

- Such as individual telephone calls;
- Such as conference calls; or
- Such as video conferences as an alternative means of participation, if the LEA and parent agree.

## **Conducting an ARD Committee Meeting Without a Parent in Attendance**

*34 CFR part 300.322(d), 300.322(d)(1), 300.322(d)(2), 300.322(d)(3), 300.501(c)(4), 19 TAC §89.1075(a)*

The LEA may conduct an ARD committee meeting without a parent in attendance if unable to convince the Parent to attend.

The LEA must keep a record of its attempts to arrange a mutually agreed on time and place:

- Such as detailed records of telephone calls made or attempted and results of those calls;
- Such as copies of correspondence sent to the parents and any responses received; and
- Such as detailed records of visits made to the parent's home or place of employment and the results of those visits.

The LEA must keep documentation of notices consistent with the Special Education Eligibility folder guidelines.

## **Use of Interpreters**

*34 CFR, Part 300.322(e)*

The LEA must take action to ensure that the Parent understands the proceedings of the ARD committee meeting:

- Including arranging for an interpreter for parents with deafness; or
- Including whose native language is other than English.

## **Parent Copy of the Child's IEP**

*34 CFR, Part 300.322(f), Texas Education Code (TEC) §29.005(d), 29.005(d)(1), 29.005(d)(2)*

The LEA must give the parent a copy of the child's IEP at no cost.

If the child's parent is unable to speak English:

- The LEA must:
  - Provide the parent with a written or audio taped copy of the child's IEP translated into Spanish if Spanish is the parent's native language; or
  - If the parent's native language is a language other than Spanish, make a good faith effort to provide the parent with a written or audio taped copy of the child's IEP translated into the parent's native language.

## **ARD Committee Meeting**

*Authorities: 20 U.S.C. § 1414; 34 C.F.R. Parts 200, 300; Texas Education Code; 19 T.A.C. Chapter 89*

### **Initial Meeting**

*20 USC §1414(d)(2)(A), 1414(d)(3)(E), 1414(d)(4)(A)(i), 34 CFR Parts 300.116(b)(1), 300.323(c)(1), 300.323(c)(2)*

The ARD committee must meet to develop an IEP within 30 days of a determination of eligibility.

As soon as possible following development of the IEP, the LEA must ensure that special education and related services are made available to the child in accordance with the child's IEP.

The term IEP means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with the ARD Committee guidelines.

### **Annual Meeting**

*20 USC §1414(d)(2)(A), 1414(d)(3)(E), 1414(d)(4)(A)(i), 34 CFR part 200.1(f)(2)(v), 300.116(b)(1), 300.320, 300.323(a), 300.324(a)(5), 300.324(b)(1)(i)*

The ARD committee must review the child's IEP periodically, but not less frequently than annually, to determine whether the annual goals are being achieved.

The ARD committee must determine the child's placement at least annually.

The IEP must be in effect at the beginning of each school year for each child with a disability.

To the extent possible, the LEA must encourage the consolidation of reevaluation meetings for the child and other ARD committee meetings for the child.

In the case of the child with a disability who transfers to a new LEA and enrolls in a new school within the same school year, the new LEA must comply with the Transfer Students guidelines.

### **Developing the IEP**

*20 USC §1414(d)(3)(A), 34 CFR Part 300.324(a)(1), 300.324(a)(1)(i), 300.324(a)(1)(ii), 300.324(a)(1)(iii), 300.324(a)(1)(iv)*

In developing each child's IEP, the ARD committee must consider:

- The strengths of the child;
- The concerns of the parents for enhancing the education of their child;
- The results of the initial evaluation or most recent evaluation of the child; and
- The academic, developmental, and functional needs of the child.

### **Revising the IEP**

*20 USC §1414(c)(1)(B), 1414(d)(1)(A)(i)(VIII)(cc), 1414(d)(4)(A)(ii), 1414(d)(4)(A)(ii)(I), 1414(d)(4)(A)(ii)(II), 1414(d)(4)(A)(ii)(III), 1414(d)(4)(A)(ii)(IV), 1414(d)(4)(A)(ii)(V), 1414(d)(6), 34 CFR Part 300.305(a)(2), 300.324(b)(1)(ii), 300.324(b)(1)(ii)(A), 300.324(b)(1)(ii)(B), 300.324(b)(1)(ii)(C), 300.324(b)(1)(ii)(D), 300.324(b)(1)(ii)(E), 300.324(c)(1), 19 TAC §89.1070(h)*

The ARD committee must revise the IEP as appropriate to address:

- Any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate;

- The results of any reevaluation;
- Information about the child provided to, or by the parents, in the Review of Existing Evaluation (REED) data;
- The child's anticipated needs;
- The failure of a participating agency to provide the transition services described in the IEP; and
- Other matters.

Changes to an IEP may be made by the entire ARD committee at an ARD committee meeting, or by amending the IEP in accordance with the Amendment without a Meeting guidelines.

### **Meeting at Parent Request**

*19 TAC §89.1045(b)*

A parent may request an ARD committee meeting at any mutually agreeable time to address specific concerns about his or her child's special education services.

The LEA must respond to the parent's request either by:

- Holding the requested meeting; or
- By requesting assistance through the TEA's mediation process.

The LEA should inform parents of the functions of the ARD committee and the circumstances or types of problems for which requesting an ARD committee meeting would be appropriate.

### **Determination of Eligibility**

*Authorities: 20 U.S.C. §§ 1401, 1414, 6368; 34 C.F.R. Part 300; 19 T.A.C. Chapter 89*

*20 USC §1401(3)(A), 1414(b)(4)(A), 1414(b)(4)(B), 1414(b)(5), 6368(3), 300 CFR part 300. 8(a)(1), 300.8 (a)(2), 300.306(a)(1), 300.306(a)(2), 300.306(b), 300.306(b)(1)(i), 300.306(b)(1)(ii), 300.306(b)(1)(iii), 19 TAC §89.1050(a)*

Upon completion of the full and individual evaluation, the ARD committee must determine whether:

- The child has a disability; and
- Who, by reason thereof, needs special education and related services.

If it is determined, through an appropriate evaluation under the full and individual evaluation guidelines, that a child has one of the disabilities but only needs a related service and not special education, the child is not a child with a disability under IDEA.

### **Analysis of Determinant Factors**

*34 CFR 300.306(b)(1)(i-ii); 20 USC 6368(3); 20 USC 1414(b)(5)*

A child must not be determined by the ARD committee to be a child with a disability if the determinant factor for such determination is:

- Lack of appropriate instruction in reading, including in the essential components of reading instruction as defined in the Elementary and Secondary Education Act (ESEA) which means explicit and systematic instruction in:
  - Phonemic awareness;
  - Phonics;
  - Vocabulary development;

- Reading fluency, including oral reading skills, and
- Reading comprehension strategies;
- Lack of appropriate instruction in math; or
- Limited English proficiency.

## **Evaluation Report and Documentation of Determination of Eligibility**

*34 CFR 300.306(a)(2); 20 USC 1414(b)(4)(B)*

The LEA must provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.

## **Transition Services**

*Authorities: 20 U.S.C. §§ 1401, 1414; 34 C.F.R. Part 300; Texas Education Code; 19 T.A.C. Chapter 89*

Appropriate transition planning under state law must begin not later than when the child reaches 14 years of age.

Beginning not later than the first IEP to be in effect when the child turns 14, or younger if determined appropriate by the ARD committee, and updated annually thereafter, the ARD committee must address transition services as part of the IEP.

This guideline applies to children for whom transition services are included as part of the IEP.

Transition services means a coordinated set of activities for the child with a disability that:

- Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including:
  - Post-Secondary education;
  - Vocational education;
  - Integrated employment, including supported employment;
  - Continuing and adult education;
  - Adult services;
  - Independent living; or
  - Community Participation;
- Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes:
  - Instruction;
  - Related services;
  - Community experiences;
  - The development of employment and other post school adult living objective; and
  - If appropriate, acquisition of daily living skills and provision of functional vocational evaluation.

If the child does not attend the ARD committee meeting where transition services are discussed (as set forth in the ARD Committee guidelines), the LEA must take other steps to ensure the child's preferences and interests are considered.

### **Development of a Coordinated Set of Activities**

*34 CFR 300.43(b); TEC 28.025(a)(b)(1-3,6-9); TAC 89.1055(g)(1); TEC 29.011(1)*

Transition services may be special education, if provided as specially-designed instruction, or a related service, if required to assist the child with a disability to benefit from special education as described in the Supplementary Aids and Services, Special Education, Related Services guidelines.

If the ARD committee determines the child is unable to participate in physical activity due to a disability or illness, the child will be allowed to substitute one credit in English language arts, mathematics, science, social studies, or one academic elective (which is not used to satisfy another graduation requirement) for one physical education credit.

The LEA must ensure that each child enrolls in the courses necessary to complete the curriculum requirements for the recommended or advanced high school program unless:

- The child, the child's parent, and a school counselor or school administrator agree in writing signed by each party that the child should be permitted to take courses under the minimum high school program and the child:
  - Is at least 16 years of age;
  - Completed two credits required for graduation in each subject of the foundation curriculum; or
  - Failed to be promoted to the tenth grade one or more times as determined by the school district;
- The LEA provides written notice, developed by the TEA and printed in English and Spanish, to the parent explaining the benefits of the recommended high school program before the child's parent agrees that the child may be permitted to take courses under the minimum high school program;
- The child's parent signs a confirmation of receipt of the written notice and returns the confirmation to the child's campus; and
- The child agreeing to take courses under the minimum high school program may, upon request, resume taking courses under the recommended high school program.

The ARD committee must consider the following issues in the development of the IEP and, if appropriate, integrate into the IEP:

- Appropriate child involvement in the child's transition to life outside the public school system;
- If the child is younger than 18 years of age, appropriate parental involvement in the child's transition;
- If the child is at least 18 years of age, appropriate parental involvement in the child's transition, if the parent is invited to participate by the adult student or the LEA;
- Any postsecondary education options;
- A functional vocational evaluation;
- Employment goals and objectives;

- If the child is at least 18 years of age, the availability of age-appropriate instructional environments;
- Independent living goals and objectives; and
- Appropriate circumstances for referring the child or the child's parents to a governmental agency for services.

The LEA must comply with the Consent for Disclosure of Confidential Information guidelines.

If a participating agency, other than the LEA, fails to provide the transition services described in the IEP, the LEA must reconvene the ARD committee to identify alternative strategies to meet the transition objectives set out in the IEP.

### **Development of Postsecondary Goals**

*34 CFR 300.320(b)(1); 20 USC 1414(d)(1)(A)(i)*

The ARD committee must develop appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to:

- Training;
- Education;
- Employment; and
- Where appropriate, independent living skills.

The ARD committee must determine transition services, including courses of study, needed to assist the child in reaching those postsecondary goals.

### **Transfer of Rights at Age of Majority**

*34 CFR 300.320©; TEC 29.017; 20 USC 1414(d)(1)(A)(i)*

Beginning not later than one year before the child reaches the age of 18, the ARD committee must provide a statement that the child has been informed of the child's rights under the Individuals with Disabilities Education Act, if any, that will transfer to the child on reaching the age of 18.

When the child reaches the age of 18, the LEA must comply with the Adult Student guidelines.

### **Present Levels**

*Authorities: 20 U.S.C. § 1414; 34 C.F.R. Part 300*

*20 USC §1414(d)(1)(A)(i)(I), 34 CFR Part 300.320(a)(1), 300.320(a)(1)(ii); Prekindergarten Curriculum Guidelines*

The ARD committee must provide a statement of the child's present levels of academic achievement.

The ARD committee must provide a statement of the child's present levels of functional performance.

The ARD committee's present levels statement must include:

- How the child's disability affects the child's involvement and progress in the general education curriculum; or
- How the disability affects the preschool child's participation in appropriate activities.

## **Annual Goals**

*Authorities: 20 U.S.C. § 1414; 34 C.F.R. Parts 200, 300  
34 CFR 300.320(a)(2)(ii)(3)(i-ii); 20 USC 1414(d)(1)(A)(i)*

The ARD committee must provide a statement of measurable annual academic goals:

- Designed to meet the child's needs that result from the child's disability to enable the child to be involved in and to make progress in the general education curriculum;
- Meet each of the child's other educational needs that result from the child's disability.

For the child who takes an alternate state assessment aligned to alternate achievement standards, the ARD committee must include in the child's IEP a description of benchmarks or short-term objectives.

The ARD committee must include in the child's IEP a description of:

- How the child's progress toward meeting the annual goals will be measured; and
- When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.

## **Special Factors**

*Authorities: 20 U.S.C. §§ 1401, 1414; 34 C.F.R. Part 300; Texas Education Code; 19 T.A.C. Chapter 89; Texas School for the Deaf Admissions FAQs; Educating Students with Visual Impairments in Texas: Guidelines and Standards; Texas School for the Blind and Visually Impaired General Information for Parents*

### **Behavior**

*34 CFR 300.324(a)(2)(i); 20 USC 1414(d)(3)(B)(i)*

In the case of a child whose behavior impedes the child's learning or that of others, the ARD committee must consider:

- The use of positive behavioral interventions and supports; and
- Other strategies to address that behavior.

### **Communication**

*34 CFR 300.324(a)(2)(i); 20 USC 1414(d)(3)(B)(iv)*

The ARD committee must consider the communication needs of the child.

### **Limited English Proficiency (LEP)**

*34 CFR 300.324(a)(2)(i); 20 USC 1414(d)(3)(B)(i); TAC 89.1220; 89.1230(b); 1225(d)(f)(4)(k)*

In the case of the child with limited English proficiency, the ARD committee must consider the language need of the child as such needs relate to the child's IEP

The ARD committee must comply with the ARD Committee Meeting guidelines by including a professional member of the LPAC to serve on the ARD committee of each child with limited English proficiency.

The decision for entry into a bilingual education or English as a second language (ESL) program must be determined by the ARD committee in conjunction with the LPAC and must comply with the State and District-wide Assessments guidelines.

If the tests approved by the commissioner of education would be inappropriate as part of the child's IEP, the ARD committee in conjunction with the LPAC must:

- Determine an appropriate assessment instrument for indicating limited English proficiency for indicating limited English proficiency; and
- Designate the grade level and scores for indicating limited English proficiency.

The decision to exit the child who receives both special education and special language services from the bilingual education or ESL program is determined by the ARD committee in conjunction with the LPAC committee.

If the standard tests used to exit children from a bilingual or ESL program would be inappropriate as part of the child's IEP, the ARD committee in conjunction with the LPAC must determine an appropriate assessment instrument and performance standard requirement.

### **Deaf or Hard of Hearing**

*34 CFR 300.324(a)(2)(iv); 20 USC 1414(d)(3)(B)(iv); TEC 29.303; 29.304*

In the case of a child who is deaf or hard of hearing, the ARD committee must consider the child's:

- Language and communication needs;
- Opportunities for direct communications with peers and professional personnel in the child's language and communication mode;
- The child's academic level; and
- Full range of needs, including opportunities for direct instruction in the child's language and communication mode.

The LEA must ensure that the child who is deaf or hard of hearing has an education in which the child's unique communication mode is respected, used, and developed to an appropriate level of proficiency.

The LEA must provide each parent with the state-adopted form that contains written information about programs offered by state institutions.

### **Blind or Visually Impaired**

*34 CFR 300.324(a)(2)(iii); 300.34(c)(7); 20 USC 1414(d)(3)(B)(iii); TAC 89.1055(d); TEC 30.002(c)(4)(f); 30.004*

In the case of a child who is blind or visually impaired, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), the ARD committee must either:

- Provide for reading and writing instruction in Braille and the use of Braille; or
- Determine that instruction in Braille or the use of Braille is not appropriate.

Before placing the child with a visual impairment in a classroom setting, or within a reasonable period of time after placement (as required for the child to succeed in classroom settings and derive lasting, practical benefits from the education in the LEA), the ARD committee must provide:

- Training in compensatory skills;
- Training in communicative skills;
- Training in orientation and mobility;
- Training in social adjustment; and
- Vocational or career counseling.

The ARD committee must develop an IEP that:

- Provides a detailed description of the arrangements made to provide the child with orientation and mobility training, instruction in Braille or use of large print, other training to compensate for serious visual loss, access to special media and special tools, appliances, aids, or devices commonly used by individuals with serious visual impairments;
- Sets forth the plans and arrangements made for contacts with and continuing services to the child beyond regular school hours to ensure the child receives the training in compensatory skills, communicative skills, orientation and mobility, and social adjustment skills, and receives the vocational or career counseling (as required for the child to succeed in classroom settings and derive lasting, practical benefits from the education in the LEA); and
- Reflects that the child has been provided a detailed explanation of the various service resources available in the community and throughout the state.

When developing the IEP for the child who is functionally blind (according to the TEA's criteria for the child to be classified as functionally blind):

- The full and individual evaluation (FIE) for visual impairment must include documentation of the child's strengths and weaknesses in Braille skills;
- Proficiency in Braille reading and writing is presumed to be essential for the child's satisfactory educational progress;
- Each person assisting in the development of the child's IEP must receive information describing the benefits of Braille instruction;
- The ARD committee must provide for Braille reading and writing instruction that is sufficient to enable the child to communicate with the same level of proficiency as other children of comparable ability who are at the same grade level;
- Braille instruction may be used in combination with other special education services appropriate to the child's educational needs;
- The ARD committee must specify the appropriate learning medium based on the FIE; and
- The ARD committee must ensure that instruction in Braille will be provided by a teacher certified to teach children with visual impairments.

The LEA must provide each parent with the state-adopted form that contains written information about programs offered by state institutions.

### **Assistive Technology**

*34 CFR 300.324(a)(2)(v); 300.5; 300.6(a)(b)(c); 20 USC 1401(1)(A)(B)(2)(C)(D)(E); 1402(2)(F)*

The ARD committee must consider whether the child needs assistive technology devices (ATDs).

The term "assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of the child with a disability.

The term "assistive technology device" does not include a medical device that is surgically implanted, or the replacement of such device.

The ARD committee must consider whether the child needs assistive technology services.

The term "assistive technology service" means any service that directly assists the child with a disability in the selection, acquisition, or use of an ATD, and includes:

- The evaluation of the needs of the child, including a functional evaluation of the child in the child's customary environment;
- Purchasing, leasing, or otherwise providing for the acquisition of ATDs by the child;
- Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing ATDs;
- Coordinating and using other therapies, interventions, or services with ATDs, such as those associated with existing education and rehabilitation plans and programs;
- Training or technical assistance for the child, or, where appropriate, the family of the child; and
- Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of the child.

## **Autism**

*34 CFR 200.320(a)(4); 20 USC 1414(d)(1)(A)(i); TAC 89.1055(e)(1-11)*

In the case of the child with autism, the strategies below must be considered by the ARD committee, based on peer-reviewed, research-based educational programming practices to the extent practicable.

If the ARD committee determines that services are not needed in one or more of the strategy areas specified below, the ARD committee must include a statement in the IEP to that effect and the basis upon which the determination was made.

When needed, the ARD committee must address the following strategies in the IEP:

- Extended educational programming (for example: extended day and/or extended school year services that consider the duration of programs/settings based on assessment of behavior, social skills, communication, academics, and self-help skills);
- Daily schedules reflecting minimal unstructured time and active engagement in learning activities (for example: lunch, snack, and recess periods that provide flexibility within routines; adapt to individual skill levels; and assist with schedule changes, such as changes involving substitute teachers and pep rallies);
- In-home and community-based training or viable alternatives that assist the child with acquisition of social/behavioral skills: (for example: strategies that facilitate maintenance and

generalization of such skills from home to school, school to home, home to community, and school to community);

- Positive behavior support strategies based on relevant information: (for example: antecedent manipulation, replacement behaviors, reinforcement strategies, and data-based decisions; and behavior intervention plan developed from a functional behavioral assessment that uses current data related to target behaviors and addresses behavioral programming across home, school, and community-based settings);
- Beginning at any age, consistent with the Transition Services framework, futures planning for integrated living, work, community, and educational environments that considers skills necessary to function in current and post-secondary environments;
- Parent/family training and support, provided by qualified personnel with experience in autism spectrum disorders that, for example:
  - Provides a family with skills necessary for the child to succeed in the home/community setting;
  - Includes information regarding resources (for example: parent support groups, workshops, videos, conferences, and materials designed to increase parent knowledge of specific teaching/management techniques related to the child's curriculum); and
  - Facilitates parental carryover of in-home training (for example: strategies for behavior management and developing structured home environments and/or communication training so that parents are active participants in promoting the continuity of interventions across all settings);
- Suitable staff-to-child ratio appropriate to identified activities and as needed to achieve social/behavioral progress based on the child's developmental and learning level (acquisition, fluency, maintenance, generalization) that encourages work towards individual independence as determined by, for example:
  - Adaptive behavior evaluation results;
  - Behavioral accommodation needs across settings; and
  - Transitions within the school day;
- Communication interventions, including language forms and functions that enhance effective communication across settings (for example: augmentative, incidental, and naturalistic teaching);
- Social skills supports and strategies based on social skills assessment/curriculum and provided across settings (for example: trained peer facilitators, circle of friends, video modeling, social stories, and role playing);
- Professional educator/staff support (for example: training provided to personnel who work with the child to assure the correct implementation of techniques and strategies described in the IEP); and
- Teaching strategies based on peer-reviewed research-based practices for children with autism spectrum disorder (for example: those associated with discrete-trial training; visual supports, applied behavior analysis, structured learning, augmentative communication, or social skills training).

## **Supplementary Aides and Services, Special Education, Related Services**

*Authorities: 20 U.S.C. §§ 1401, 1414, 7801; 34 C.F.R. Part 300; Texas Education Code; 19 T.A.C. Chapter 89*

For each child placed in a residential setting by the ARD committee:

Supplementary aides and services, special education, and related services must be based on peer-reviewed research to the extent practicable.

### **Supplementary Aides and Services**

*34 CFR 300.320(a)(4); 300.42; 20 USC 1401(33); TAC 89.1050(a)(1)*

The ARD committee must determine needed supplementary aides and services to be provided to the child, or on behalf of the child.

The term "supplementary aides and services" means aides, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable the child with a disability to be educated with nondisabled children to the maximum extent appropriate.

### **Special Education**

*34 CFR 300.320(a)(4); 300.39(a); 20 USC 1414(d)(1)(A)(i); TAC 89.1050(a)(1)*

The ARD committee must determine needed special education services.

The term "special education" means specially-designed instruction, at no cost to parents, to meet the unique needs of the child with a disability.

### **Related Services**

*34 CFR 300.320(a)(4); 300.34(a)(b); 20 USC 1414(d)(1)(A)(i); 1401(26); TAC 89.1050(a)(1)*

The ARD committee must determine needed related services.

The term "related services" means transportation, and such developmental, corrective, and other supportive services as may be required to assist the child with a disability to benefit from special education.

For each child placed in a residential setting by the ARD committee:

- The resident school district shall be responsible for transportation at the beginning and end of the term and for regularly scheduled holidays when students are expected to leave the residential campus; and
- When the ARD committee determines it is necessary for the safety of the child to be accompanied by an adult designated by the ARD committee, round-trip transportation for that adult shall also be provided.

### **Program Modifications and Support for School Personnel**

*34 CFR 300.320(a)(4)(ii); 300.107; 300.117; 20 USC 1414(d)(1)(A)(i); 1401(26); TAC 89.1050(a)(1)*

The ARD committee must determine needed program modifications or supports for school personnel that will be provided to the child to enable the child to:

- Advance appropriately toward attaining the annual goals;
- Be involved in and make progress in the general education curriculum, and be afforded an equal opportunity to participate in extracurricular and other nonacademic activities including, to the maximum extent appropriate, in nonacademic settings and services such as:
  - Meals;
  - Recess periods;
  - Counseling services;
  - Athletics;
  - Transportation;
  - Health services;
  - Recreational activities;
  - Special interest groups or clubs sponsored by the LEA;
  - Referrals to other agencies that provide assistance to individuals with disabilities;
  - Employment of children, including both employment by the LEA and assistance in making outside employment available; and
- Be educated and participate with other children with disabilities and nondisabled children.

### **Training to Implement the Individualized Education Program (IEP)**

*TEC 21.451(d)(2)(e)(f)*

The LEA is required to provide training to an educator who works primarily outside the area of special education only if the educator does not possess the knowledge and skills necessary to implement the IEP developed for the child receiving instruction from the educator:

- The LEA may determine the time and place at which the training is delivered;
- The LEA must include training based on scientifically-based research that:
  - Relates to instruction of children with disabilities; and
  - Is designed for educators who work primarily outside the area of special education; and
- In developing or maintaining the training, the LEA must consult with persons with expertise in research-based practices for children with disabilities such as:
  - Persons from colleges, universities, private and nonprofit organizations, regional education service centers;
  - Qualified LEA personnel; and
  - Any other persons identified as qualified by the LEA.

### **Intensive Program of Instruction**

*TEC 28.0211; 28.0213(a)(c)(e)(1-2); TAC 89.1050(a)(10)*

For the child who did not perform satisfactorily on statewide assessment under the State and District-wide Assessments guidelines:

- The ARD committee must design the intensive program of instruction:
  - To enable the child to attain a standard of annual growth on the basis of the child's IEP; and
  - If applicable, to carry out the purposes of the Student Success Initiative.

For the child who did not perform satisfactorily on an end-of-course assessment instrument for secondary level courses in Algebra I, Biology, English I, English II, or United States History:

- The ARD committee must design the intensive program of instruction:
  - To enable the child to attain a standard of annual growth on the basis of the child's IEP; and
  - If applicable, to carry out the purposes of the Student Success Initiative.

### **Accelerated Instruction under the Texas Reading Initiative**

TEC 28.006(c)(g); TAC 89.1050(a)(7)

For the child in kindergarten or first or second grade who did not perform satisfactorily on a reading assessment instrument selected from the list adopted by the commissioner of education or by the district-level committee, and administered as part of the Texas Reading Initiative:

- The ARD committee must determine the manner in which the child will participate in an accelerated reading instruction program.

### **Student Success Initiative for Children in Grades Fifth and Eighth**

TEC 28.0211(i)(1)

The ARD committee must determine the manner in which the child will participate in an accelerated instruction program when required as part of the Student Success Initiative.

The ARD committee must determine whether the child will be promoted or retained when required as part of the Student Success Initiative.

### **Initiation, Frequency, and Duration of Services**

34 CFR 300.320(a)(7); 20 USC 1414(d)(1)(A)(i); TAC 89.1075(d)

The ARD committee must determine:

- The projected date for the beginning of the services and modifications;
- The anticipated frequency of those services and modifications; and
- The anticipated duration of those services and modifications.

The ARD committee must determine the appropriate length of school day and specify the length of school day in the IEP.

Children with disabilities must have available an instructional day commensurate with that of children without disabilities.

### **Location**

TEC 25.0343(a)(1-2)(b)(c)(1)(d); TAC 89.1050(a)(1);

The ARD committee must determine the anticipated location of those services and modifications. If, for the purpose of receiving special education services, the LEA assigns the child to a campus location other than the campus location the child would attend based on the child's residence:

- The LEA must permit the child's parent, guardian, or other person standing in parental relation to the child to obtain a transfer to the assigned campus for any other child residing in the household of the child receiving special education services, provided that:
  - The other child is entitled to attend school in the LEA;
  - The appropriate grade level for the other child is offered at the campus;
  - The child receiving special education services does not reside in a residential facility; and

- The LEA is not required to provide transportation to the other child who transfers to another campus location under this section; however, this does not affect any transportation services provided by the LEA in accordance with other laws for the child receiving special education services.

## **Least Restrictive Environment (LRE)**

*Authorities: 20 U.S.C. §§ 1412, 1414; 34 C.F.R. Part 300; Texas Education Code; 19 T.A.C. Chapter 89; Fifth Circuit Federal Court of Appeals; Office of Special Education Programs (OSEP)*

The LEA must ensure that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled.

The LEA must ensure that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

In providing or arranging for the provision of nonacademic and extracurricular services and activities, the LEA must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of the child.

## **Preschool-aged Children**

*34 CFR 300.101(a)(b); 300.102(a)(1); 300.116; OSEP Policy Memo 8-23*

The LEA must provide a free appropriate public education (FAPE) in the LRE to preschool-aged children even if the LEA does not provide free preschool programs to all preschool-aged children:

- LEAs that do not operate preschool programs for nondisabled preschool children may use some alternative methods for meeting the LRE requirements including:
  - Providing opportunities for the participation (even part-time) of preschool children with disabilities in other preschool programs operated by public agencies (such as Head Start);
  - Placing children with disabilities in private school programs for nondisabled preschool children or private school preschool programs that integrate children with disabilities and non-disabled children; and
  - Locating classes for preschool children with disabilities in regular elementary schools;
- LEAs are not required to initiate preschool programs solely to satisfy the requirements regarding placement in the LRE;
- LEAs are not required to establish extensive contract programs with private schools which serve both children with disabilities and children without disabling conditions solely to implement LRE requirements; and
- The use of facilities which are separate or otherwise solely devoted to children with disabilities is generally permissible only when necessary to meet an individual child's specific needs and should not be the only option available.

## Factors for Consideration

*34 CFR 300.116(e); Daniel RR v SBOE (5th Cir. 1989)*

The ARD committee must determine whether education in the regular classroom, with the use of supplementary aids and services, can be achieved satisfactorily by considering the following factors:

- Whether the LEA provided supplementary aids and services;
- Whether the LEA modified the regular education program:
  - A child with a disability may not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum;
- Whether the efforts to modify and supplement regular education were sufficient:
  - The LEA need not provide every conceivable supplementary aid or service to assist the child;
  - The IDEA does not require regular education instructors to devote all or most of their time to one disabled child or to modify the regular education program beyond recognition;
- Whether the child will receive an educational benefit from regular education (including nonacademic benefit);
- The child's overall educational experience in the mainstreamed environment, balancing the benefits of regular and special education for the individual child:
  - For example, a child may be able to absorb only a minimal amount of the regular education program, but may benefit enormously from the language models that his or her nondisabled peers provide (in such a case, the benefit that the child receives from mainstreaming may tip the balance in favor of mainstreaming); and
- The effect the disabled child's presence has on the regular classroom, and thus, on the education that the other children are receiving.

If the ARD committee determines that education in the regular classroom cannot be achieved satisfactorily, then the ARD committee must determine whether the child has been mainstreamed to the maximum extent appropriate:

- The IDEA and its regulations do not contemplate an all-or-nothing educational system in which disabled children attend either regular or special education;
- The IDEA and its regulations require LEAs to offer a continuum of services; and
- The LEA must take intermediate steps where appropriate, such as placing the child in regular education for some academic classes only, or providing interaction with nondisabled children during lunch and recess.

In selecting the LRE, the ARD committee must consider any potential harmful effect:

- On the child; or
- On the quality of services that the child needs.

## Placement Determination

*34 CFR 300.116(b)(1)(2); 300.320(a)(4)(ii-iii)(5); 20 USC 1414(d)(1)(A)(i)(v); TAC 89.1075(d)*

The ARD committee must determine the child's placement.

The ARD committee's placement decision must be based on the child's IEP in compliance with the SUPPLEMENTARY guidelines.

The ARD committee must provide an explanation of the extent, if any, to which the child will participate with nondisabled children:

- In the regular class;
- In the general curriculum; and
- In extracurricular and other nonacademic activities.

The ARD committee must determine the appropriate length of school day:

- Children with disabilities must have available an instructional day commensurate with that of children without disabilities.

### **Instructional Arrangements**

*34 CFR 300.115(a)(b); TAC 89.63(c); 89.1075(d); 89.1080*

The LEA must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

The ARD committee must specify the appropriate instructional arrangement/setting:

- Mainstream;
- Homebound;
- Hospital class;
- Speech therapy;
- Resource room/services;
- Self-contained (mild, moderate, or severe);
- Off home campus;
- Nonpublic day school;
- Vocational adjustment class/program;
- State school for persons with mental retardation; or
- Residential care and treatment facility (not LEA resident).

Subject to ARD committee recommendations, a student must be eligible for consideration for the Regional Day School Program for the Deaf, if:

- Even with recommended amplification, the student has an auditory impairment, which:
  - Severely impairs processing linguistic information through hearing; and
  - Adversely affects educational performance.

### **Children Residing in a Residential Facility**

*TAC 89.1115(d)(3)(B)(d)(4)*

The ARD committee's educational placement determination must be individualized, based on need, and not made on a categorical basis, such as the disability or residence in the residential facility.

The ARD committee must not determine educational placement on the basis of what is most convenient to the LEA or residential facility.

The ARD committee must determine the appropriate educational placement for the child, considering:

- All available information regarding the educational needs of the student;
- Non-educational needs that may restrict the ability of the LEA to serve the child on a public school campus or other instructional setting:
  - Which could include the child's health and safety (e.g. substance abuse); and/or
  - The child's placement in a restrictive residential facility program (e.g., juvenile incarceration or restrictive court-ordered placements).
- When educational services will be provided at the residential facility, the ARD committee must determine appropriate educational space as follows:
- Whether space available at the residential facility is appropriate for the provision of a FAPE based on the individual child's needs and the residential facility's available space; or
- If the ARD committee or residential facility determines that the residential facility has no appropriate available space, identify alternative locations for providing educational services.

### **Residential Placement at Public Expense**

*TAC 89.61(a)(4)(A,B,C,F)*

When making a residential educational placement, the ARD committee must:

- List the services which the LEA is unable to provide and which the facility will provide;
- Establish criteria and estimated timelines for the child's return to the LEA;
- Verify residential placement is needed;
- Verify the placement is the LRE for the child;
- Comply with the Supplementary Aides and Services, Special Education, Related Services framework when selecting the facility.
- Comply with the Use of Funds for Contract Services Including Residential Placements framework.

### **Texas School for the Blind and Visually Impaired (TSBVI) and Texas School for the Deaf (TSD)**

*TAC 89.1085(c)(d); 89.1090; TEC 30.057(a)(2)*

When placing the student at the TSBVI or TSD, the ARD committee must:

- List those services in the child's individualized education program (IEP) which the LEA cannot appropriately provide in a local program and which the TSBVI or the TSD can appropriately provide;
- Include in the child's IEP the criteria and estimated time lines for returning the child to the resident LEA; and
- Determine whether it is necessary for the safety of the child:
  - For an adult to accompany the child when transporting the child at the beginning and end of the term for regularly scheduled school holidays when children are expected to leave the residential campus; and
  - If the child must be accompanied, designate the adult to accompany the child.

When placing a child at the TSBVI or TSD, the LEA may make an on-site visit to verify that the TSBVI or the TSD can and will offer the services listed in the individual child's IEP and to ensure that the school offers an appropriate educational program for the child.

For children placed by their parents or legal guardians at the TSD, the TSD shall be responsible for assuring that a FAPE is provided to the child at the TSD.

## **State and District-wide Assessments**

Authorities: 20 U.S.C. §§ 1412, 1414, 6311; 34 C.F.R. Parts 200, 300; Texas Education Code; 19 T.A.C. Chapters 89, 101

In general, all children with disabilities are included in all general state and district wide assessment programs, including assessments described under the ESEA, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective IEPs.

### **District-wide Assessments**

*20 USC §1412(a)(16)(B), 1414(d)(1)(A)(i)(VI)(aa), 1414(d)(1)(A)(i)(VI)(bb), 34 CFR part 300.320(a)(6)(i), 300.320(a)(6)(ii), 300.320(a)(6)(ii)(A), 19 TAC §89.1055(b), 89.1055(b)(1), 89.1055(b)(2),*

If the district administers any optional district-wide assessments of achievement, the ARD committee must provide a statement of any individualized appropriate and allowable accommodations that are necessary to measure the academic achievement and functional performance of the child on such assessments.

If the ARD committee determines that the child must take an alternate assessment on a particular district-wide assessment of achievement, the ARD committee must provide a statement of:

- Why the child cannot participate in the regular assessment; and
- Why the particular alternate assessment selected is appropriate for the child.

### **Assessments to Identify Children as English Language Learners (ELLs)**

*19 TAC §89.1225(d), 89.1225(f)(4)*

For entry of the child into a bilingual education or English as a second language (ESL) program, if the tests approved by the commissioner of education would be inappropriate as part of the child's IEP, the ARD committee in conjunction with the language proficiency assessment committee (LPAC) must:

- Determine an appropriate assessment instrument for indicating limited English proficiency; and
- Designate the grade level and scores that should identify the child as an ELL.

### **Annual Assessment for English Language Learners (ELLs)**

*19 TAC §101.1003(a), 101.1003(b), 101.1003(c)*

The local educational agency (LEA) must administer state-identified English language proficiency assessments to children with limited English proficiency who are in kindergarten through grade 12 in the areas of listening, speaking, reading, and writing. The ARD committee in conjunction with the LPAC must determine the need for allowable testing accommodations. In rare cases, the ARD committee in conjunction with the LPAC may determine that it is not appropriate for an ELL who receives special education services to participate in an English language proficiency assessment for reasons associated with the child's particular disability. If the ARD committee in conjunction with the LPAC determines that it is not appropriate for an ELL who receives special education services to participate in an English language proficiency assessment for reasons associated with the child's particular disability, the ARD committee must document the decisions and justifications in the child's IEP.

## Assessment for Exit from a Bilingual or ESL Program

19 TAC §89.1225(h), 89.1225(k)

For exit from a bilingual education or an ESL program of the child with disabilities for whom the tests would be inappropriate as part of the IEP, the ARD committee in conjunction with the LPAC must determine:

- An appropriate assessment instrument for exit from a bilingual education or an ESL program; and
- The performance standard on the assessment instrument required for exit.

## State Assessments

20 U.S.C. §§ 1412(a)(16)(C), 1414(d)(1)(A)(i)(VI)(bb); 34 CFR §§200.1(d), 200.1(e)(2), 200.1(f)(1)(iv), 300.320(a)(6)(i), 300.320(a)(6)(ii), 300.320(a)(6)(ii)(A), 300.320(a)(6)(ii)(B); TEC 39.023(b), TEC 39.025(a-4); 19 TAC §§89.1055(b), 101.1005, 101.1005(a), 101.1005(e), 101.29

The ARD committee must provide a statement of individualized appropriate and allowable accommodations that are necessary to measure the academic achievement and functional performance of the child on any state assessment including an end-of-course assessment.

Children receiving special education services who have the most significant cognitive disabilities and are unable to participate in the other state assessments, even with substantial accommodations and/or modifications, may be assessed with a state alternate assessment if the state's participation criteria are met.

If the ARD committee determines that the child must take an alternate assessment on a particular state assessment, the ARD committee must provide a statement of:

- Why the child cannot participate in the regular state assessment; and
- Why the particular modified or alternate assessment selected is appropriate for the child.

The LEA must inform parents of children selected to be assessed with a modified or alternate state assessment that their child's achievement will be measured based on modified or alternate academic achievement standards.

For the English language learner in conjunction with the LPAC, the ARD committee must:

- Select the appropriate assessments;
- Document the decisions and justifications in the child's IEP; and
- Determine and document any allowable testing accommodations.

For a child who will take end-of-course assessments, the ARD committee must determine whether the child is required to achieve satisfactory performance on the end-of-course assessment instruments to receive a high school diploma.

## Graduation

Authorities: 20 U.S.C. §§ 1412, 1414; 34 C.F.R. Part 300; Texas Education Code; 19 T.A.C. Chapter 89; Texas Essential Knowledge and Skills (TEKS)

Graduation from high school with a regular high school diploma under these guidelines:

- Requires compliance with the Summary of Performance guidelines; and
- Constitutes a change of placement requiring compliance with the Prior Written Notice guidelines.

### **Recommended or Distinguished Achievement High School Programs**

*TAC 89.1070(a)(b)(1); TEC 28.025((b11)(c)(1); TEC 39.025; 34 CFR 300.102(a)(3)*

The child receiving special education services may graduate and be awarded a regular high school diploma if:

- The child satisfactorily completes the state's or LEA's, whichever is greater, required standards in the TEKS and credit requirements for graduation, under the recommended or distinguished achievement high school programs applicable to children in general education; and
- The child performs satisfactorily on the required state assessments.

If the ARD committee determines that the child is unable to participate in physical activity due to a disability or illness, the student may be allowed to substitute one credit in English language arts, mathematics, science, social studies, or one academic elective credit for the physical education credit required for graduation.

Graduation with a regular high school diploma under the recommended or distinguished achievement high school programs terminates the child's eligibility for special education services and entitlement to the benefits of the Foundation School Program.

### **Minimum High School Program**

*TAC 89.107(b)(2); TEC 28.025(c)(1); TEC 39.025; 34 CFR 300.102(a)(3)*

The child receiving special education services may graduate and be awarded a regular high school diploma if:

- The child satisfactorily completes the state's or LEA's, whichever is greater, required standards in the TEKS and credit requirements for graduation under the minimum high school program applicable to children in general education; and
- The child participates in the required state assessments.

The ARD committee determines as part of participation in state and district-wide assessments whether satisfactory performance on the required state assessments is necessary for graduation.

If the ARD committee determines that the child is unable to participate in physical activity due to a disability or illness, the student may be allowed to substitute one credit in English language arts, mathematics, science, social studies, or one academic elective credit for the physical education credit required for graduation.

Graduation with a regular high school diploma under the minimum high school program terminates the child's eligibility for special education services and entitlement to the benefits of the Foundation School Program.

## **Modified Requirements under Minimum High School Program and Completion of Individualized Education Program (IEP)**

*TAC 89.107(b)(3)(A-C)(e)(f); TEC 28.025(c)(1); TEC 39.025; 34 CFR 300.102(a)(3)*

The child receiving special education services may graduate and receive a regular high school diploma if:

- The child satisfactorily completes the state's or LEA's, whichever is greater, required standards in the TEKS through courses, one or more of which contain modified content that is aligned to the standards required under the minimum high school program;
- The child satisfactorily completes the state's or LEA's, whichever is greater, credit requirements under the minimum high school program;
- The child successfully completes the child's IEP;
- The child meets one of the following conditions consistent with the child's IEP:
  - Full-time employment, based on the child's abilities and local employment opportunities, in addition to sufficient self-help skills to maintain the employment without direct and on-going educational support of the LEA;
  - Demonstrated mastery of specific employability skills and self-help skills which do not require direct on-going educational support of the LEA; or
  - Access to services which are not within the legal responsibility of public education, or employment or educational options for which the child has been prepared by the academic program; and
- The child participates in the required state assessments.

The ARD committee determines as part of participation in state and district-wide assessments whether satisfactory performance on the required state assessment is necessary for graduation.

If the ARD committee determines that the child is unable to participate in physical activity due to a disability or illness, the student may be allowed to substitute one credit in English language arts, mathematics, science, social studies, or one academic elective credit for the physical education credit required for graduation.

Employability and self-help skills are those skills directly related to the preparation of children for employment, including general skills necessary to obtain or retain employment.

For children who receive a diploma under this part, upon the request of the child or parent to resume services, the ARD Committee must determine needed educational services as long as the child meets the age eligibility requirements.

## **Completion of Four Years of High School but Not Meeting Graduation Requirements**

*TAC 89.1070(b)(4); TEC 89.1070(a); 34 CFR 300.102(a)(3)*

The LEA must issue a certificate of attendance to the child who receives special education services and who has completed four years of high school but has not completed the child's IEP.

The LEA must allow the child who receives a certificate of attendance to participate in a graduation ceremony with children receiving high school diplomas.

The child may participate in only one graduation ceremony to receive a certificate of attendance.

The child who receives a certificate of attendance is not prevented from meeting graduation requirements and receiving a diploma as long as the child continues to be age eligible for special education services.

Children who participate in graduation ceremonies but who are not receiving a high school diploma and who will remain in school to complete their education do not have to be evaluated prior to participating in the ceremonies.

## **Extended School Year (ESY) Services**

*Authorities: 34 C.F.R. Part 300; 19 T.A.C. Chapter 89*

*34 CFR Part 300.106(b), 300.106(b)(1), 300.106(b)(1)(i), 300.106(b)(1)(ii), 300.106(b)(1)(iii), 300.106(b)(2), 19 TAC §89.1065(8)*

"Extended school year services" (ESY) means special education and related services that:

- Are provided to a child with a disability:
  - Beyond the normal school year of the public agency;
  - In accordance with the child's IEP; and
  - At no cost to the parents of the child; and
- Meet the standards of the TEA.

The provision of ESY services is limited to the educational needs of the child and must not supplant or limit the responsibility of other public agencies to continue to provide care and treatment services pursuant to policy or practice, even when those services are similar to, or the same as, the services addressed in the child's IEP.

No child will be denied ESY services because the child receives care and treatment services under the auspices of other agencies.

## **Limitations**

*34 CFR Part 300.106(a)(3), 300.106(a)(3)(i), 300.106(a)(3)(ii), 19 TAC §89.1065(1), 89.1065(1)(A), 89.1065(1)(B)*

In determining the need for and in providing ESY services, the LEA may not:

- Limit ESY services to particular categories of disability; or
- Unilaterally limit the type, amount, or duration of ESY services.

## **Determination of Need**

*34 CFR Part 300.106(a)(1), 300.106(a)(2), 19 TAC §89.1065(1), 89.1065(5)*

The need for ESY services must be determined on an individual basis by the ARD committee:

- Each LEA must ensure that ESY services are available as necessary to provide FAPE and
- ESY services must be provided only if a child's ARD committee determines, on an individual basis, that the services are necessary for the provision of FAPE.

If the LEA does not propose ESY services for discussion at the annual review of a child's IEP, the parent may request that the ARD committee discuss ESY services.

## **Data to Make the Decision**

*19 TAC §89.1065(2), 89.1065(7)*

The ARD committee must determine the need for ESY from formal and/or informal evaluations provided by the district or the parents:

- For a child enrolling in the LEA during the school year, information obtained from the prior LEA as well as information collected during the current year may be used to determine the need for ESY services.

## **Regression in Critical Areas**

*19 TAC §89.1065(2), 89.1065(4), 89.1065(4)(A), 89.1065(4)(B), 89.1065(4)(C), 89.1065(4)(D), 89.1065(4)(E)*

The ARD committee must identify the critical areas addressed in the current IEP objectives, if any, in which the child has exhibited, or reasonably may be expected to exhibit, severe or substantial regression that cannot be recouped within a reasonable period of time:

- A skill is critical when the loss of that skill results, or is reasonably expected to result, in any of the following occurrences during the first eight weeks of the next regular school year:
  - Placement in a more restrictive instructional arrangement;
  - Significant loss of acquired skills necessary for the child to appropriately progress in the general curriculum;
  - Significant loss of self-sufficiency in self-help skill areas as evidenced by an increase in the number of direct service staff and/or amount of time required to provide special education or related services;
  - Loss of access to community-based independent living skills instruction or an independent living environment provided by noneducational sources as a result of regression in skills; or
  - Loss of access to on-the-job training or productive employment as a result of regression in skills; and
- “Severe or substantial regression” means that the child has been, or will be, unable to maintain one or more acquired critical skills in the absence of ESY services.

## **Recoupment of Acquired Skills**

*19 TAC §89.1065(3)*

The ARD committee must determine the reasonable period of time for recoupment of acquired skills on the basis of needs identified in the child’s IEP:

- If the loss of acquired critical skills would be particularly severe or substantial, or if such loss results, or reasonably may be expected to result, in immediate physical harm to the child or to others, ESY services may be justified without consideration of the period of time for recoupment of such skills. In any case, the period of time for recoupment must not exceed eight weeks.

## **Goals and Objectives**

*19 TAC §89.1055(C), 89.1065(6)*

If the ARD committee determines that the child is in need of ESY services, then the IEP must also include goals and objectives for ESY services from the child’s current IEP.

If a child for whom ESY services were considered and rejected loses critical skills because of the decision not to provide ESY services, and if those skills are not regained after the reasonable period of time for recoupment, the ARD committee shall reconsider the current IEP if the child's loss of critical skills interferes with the implementation of the child's IEP.

## **Reaching Closure and Consensus**

*Authorities: Texas Education Code; 19 T.A.C. Chapter 89*

### **Reaching Closure**

*19 TAC §89.1050(e), TEC §29.005(d)*

The ARD committee documentation must include:

- The date of the meeting;
- The names, positions, and signatures of the members participating in each meeting; and
- Each member's agreement or disagreement with the committee's decisions.

If the student's parent is unable to speak English, either:

- Provide the parent with a written or audio taped copy of the student's individualized education program (IEP) as record of the ARD meeting translated into Spanish if Spanish is the parent's native language; or
- If the parent's native language is a language other than Spanish, make a good faith effort to provide the parent with a written or audio taped copy of the student's IEP as record of the ARD meeting translated into the parent's native language.

### **Reaching Consensus**

*19 TAC §89.1050(h), 89.1050(h)(1), 89.1050(h)(2), 89.1050(h)(3), 89.1050(h)(5)*

A decision of the committee concerning required elements of the IEP must be made by mutual agreement of the required members if possible.

When mutual agreement about all required elements of the IEP is not achieved, the ARD committee must:

- Offer the parents or adult student who disagrees a single opportunity to have the committee recess for a period of time not to exceed ten school days:
  - Except when the student's presence on the campus presents a danger of physical harm to the student or others or when the student has committed an expellable offense or an offense which may lead to a placement in an alternative education program (AEP);
- Provide a written statement of the basis for the disagreement;
- Offer the members who disagree the opportunity to write their own statements; and
- When the parent accepts the offer to reconvene, determine by mutual agreement prior to the recess, the date, time, and place for continuing the ARD committee meeting.

During a recess, the ARD committee members must:

- Consider alternatives;
- Gather additional data;
- Prepare further documentation; and/or

- Obtain additional resource persons which may assist in enabling the ARD committee to reach mutual agreement.

When the ARD committee cannot reach mutual agreement (after the ten-day recess or when the parent refuses the ten-day recess) the LEA must:

- Provide the parent with prior written notice; and
- Implement the IEP which it has determined to be appropriate for the child.

## **Amendment Without A Meeting**

*Authorities: 20 U.S.C. §§ 1414, 1415; 34 C.F.R. Part 300*

*20 USC §1414(b)(4)(A), 1414(d)(3)(F), 1414(e), 1415(k)(1)(E)(i), 34 CFR Part 300.306, 300.116, 300.324(a)(4), 300.324(a)(6), 300.530(e)*

After the annual ARD meeting, changes to the IEP may be made either:

- By the entire ARD committee; or
- By amending the IEP rather than by redrafting the entire IEP.

Eligibility determinations, changes of placement, and manifestation determination reviews may not be conducted through the amendment without a meeting process.

## **Amendment Process**

*20 USC §1414(d)(3)(D), 34 CFR Part 300.324(a)(4)(i)*

To amend the IEP without an ARD committee meeting:

- The parent of a child with a disability and the LEA must agree not to convene an ARD committee meeting for the purpose of making changes to the IEP; and
- The LEA must develop a written document to amend or modify the child's current IEP.

## **Revised IEP**

*20 USC §1414(d)(3)(F), 34 CFR part 300.324(a)(4)(ii), 300.324(a)(6)*

If the IEP is amended without an ARD committee meeting, the ARD committee must be informed of those changes.

Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

## **Prior Written Notice**

*Authorities: 20 U.S.C. §§ 1414, 1415; 34 C.F.R. Part 300; 19 T.A.C. Chapter 89*

The LEA must comply with the Parent and Adult Student guidelines, as appropriate.

For the child who is incarcerated, the LEA must comply with the Incarcerated Students guidelines.

The LEA must comply with the Consent guidelines, where applicable.

## **When Prior Written Notice is Required**

*20 United States Code (USC) §1415(a), 1415(b)(3), 34 Code of Federal Regulations (CFR) Part 300.503(a), 300.504, 300.300, 19 Texas Administrative Code (TAC) §89.1045(a), 89.1050(h)(6)*

The LEA must provide prior written notice to the parent before it:

- Proposes or refuses to initiate or change the identification of the child;

- Proposes or refuses to initiate or change the evaluation of the child;
- Proposes or refuses to initiate or change the educational placement of the child;
- Proposes or refuses to initiate or change the provision of a FAPE to the child;
- Ceases the provision of special education and related services due to the parent's revocation of Consent for Services; or
- Implements an IEP with which the parent or adult student disagrees (see the Reading Closure and Consensus guidelines).

The LEA must invite the parents and adult student to participate as members of ARD committee by providing prior written notice.

The LEA must provide prior written notice regardless of whether the parent agreed to the change or requested the change.

### **Timeline and Manner**

*20 USC §1415(b)(4), 1415(n), 34 CFR Part 300.322(a)(1), 300.503(c)(1)(ii), 300.505, 19 TAC §89.1015*

The LEA must provide the parents prior written notice at least five school days (unless the parents agree otherwise) before the LEA proposes to (or refuses to) initiate or change the identification, evaluation, or educational placement of the child with a disability or the provision of FAPE to the child.

If the prior written notice is in response to a parent's revocation of consent for services, the LEA must provide prior written notice before ceasing the provision of special education and related services to the child.

If the prior written notice is of an ARD committee meeting, the LEA must notify the parents early enough to ensure that the parents will have an opportunity to attend (see the Parent Participation guidelines).

The LEA must provide prior written notice in language understandable to the general public and in the native language of the parents or other mode of communication used by the parents, unless it is clearly not feasible to do so.

A parent may elect to receive prior written notices by an electronic mail communication, if the LEA makes that option available.

### **Required Content**

*20 USC §1415(c)(1), 1415(c)(1)(A), 1415(c)(1)(B), 1415(c)(1)(C), 1415(c)(1)(D), 1415(c)(1)(E), 1415(c)(1)(F), 34 CFR Part 300.503(b), 300.503(b)(1), 300.503(b)(2), 300.503(b)(3), 300.503(b)(4), 300.503(b)(5), 300.503(b)(6), 300.503(b)(7)*

The LEA must include in its prior written notice:

- The LEA must include in its prior written notice:
- An explanation of why the LEA proposes or refuses to take the action;
- A description of each evaluation procedure, assessment, record, or report the LEA used as a basis for the proposed or refused action;
- 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 LEA's proposal or refusal;
- Sources for parents to contact to obtain assistance in understanding the provisions of the IDEA, Part B;
- A statement that the parents have protection under the procedural safeguards of IDEA Part B; and
- The means by which a copy of a description of the procedural safeguards can be obtained if the prior written notice is not an initial referral for evaluation.

### **Additional Content Requirements for a Proposal to Evaluate**

*34 CFR Part 300.304(a), 20 USC §1414(b)(1)*

If the LEA is proposing to conduct an evaluation, it must also include in the prior written notice a description of any evaluation procedure it proposes to conduct.

### **Additional Content Requirements for Proposal to Convene an ARD Committee Meeting**

*34 CFR Part 300.322(b)(1), 300.322(b)(1)(i), 300.322(b)(1)(ii), 300.322(b)(2), 300.322(b)(2)(i)(A), 300.322(b)(2)(i)(B), 300.322(b)(2)(ii), 19 TAC §89.1055(g)*

If the LEA is proposing to convene an ARD committee meeting, it must also include as part of the prior written notice:

- The purpose, time, and location of the meeting;
- Who will attend the meeting;
- Information relating to the ARD committee membership of other individuals who have knowledge or special expertise about the child; and
- Information relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial ARD committee meeting for the child previously served under IDEA Part C.

### **Additional Content Requirements When the ARD Committee Will Consider Transitional Services**

*34 CFR 300.322(b)(2)(i)(A)(B); 300.321(b)(3); 300.622(a); 20 USC 1417(c); TAC 89.1055(g)*

Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the ARD committee, the prior written notice of an ARD committee meeting must also:

- Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child;
- Indicate that the LEA will invite the child; and
- Identify any other agency that will be invited to send a representative if the LEA has obtained the parent's or the adult student's consent to invite a representative from another agency (see Consent for Disclosure of Confidential Information guidelines).

## **Consent**

### **Consent for Initial Evaluation**

*Authorities: 20 U.S.C. § 1414; 34 C.F.R. Part 300; Texas Education Code*

The LEA must comply with the Parent and Adult Student guidelines, as appropriate.

The LEA proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability must comply with the Prior Written Notice guidelines.

The LEA must obtain informed consent from the Parent before conducting an initial evaluation.

### **Actions that Do Not Constitute Evaluation**

*20 USC §1414(a)(1)(D)(i)(I), 1414(a)(1)(E), 1414(c)(1), 34 CFR Part 300.300(a)(1)(ii), 300.300(d)(1), 300.300(d)(1)(i), 300.300(d)(1)(ii), 300.302*

The following actions do not constitute evaluation:

- Screening to determine strategies for curriculum implementation;
- Conducting a REED as part of an initial evaluation or a reevaluation; and
- Administering a test or other evaluation that is administered to all children.

### **Elements of Consent for an Initial Evaluation**

*20 USC §1414(a)(1)(D), 1414(a)(1)(D)(i)(I), 34 CFR Part 300.300(a)(1)(ii), 300.300(a)(1)(iii), 300.300(d)(5), 300.322(d), 300.9(a), 300.9(b), 300.9(c)(1), 300.9(c)(2)*

The "informed consent" that the LEA must obtain to conduct an initial evaluation means:

- The parent has been fully informed of all information relevant to the initial evaluation in his or her native language or other mode of communication;
- The consent describes the initial evaluation;
- The consent lists the records (if any) that will be released and to whom;
- The parent understands and agrees in writing to the LEA carrying out the initial evaluation;
- The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; and
- The parent understands that if the parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

Parental consent for initial evaluation does not constitute Consent for Services.

### **Information and Consent for Certain Psychological Examinations or Tests**

*TEC 29.041(a-c); 34 CFR 300.300(c)(1); TEC 29.004(a)(c); 20 USC 1414(a)(1)(C)(i)*

On request of a child's parent, before obtaining the parent's consent for the administration of any psychological examination or test to the child that is included as part of the evaluation of the child's need for special education, the LEA must provide to the child's parent the name and type of the examination or test, and an explanation of how the examination or test will be used to develop an appropriate IEP for the child:

- If the LEA determines that an additional examination or test is required for the evaluation of a child's need for special education after obtaining consent from the child's parent, the LEA must provide the required information to the child's parent regarding the additional examination or test and its use, and must obtain additional consent for the examination or test:
  - If a parent does not give consent for the additional examination or test within 20 calendar days after the date the LEA provided to the parent the required information

- about the additional examination or test and its use, the parent's consent is considered denied; or
- If the parent does give consent for the additional examination or test, the time required for the district to provide information and seek consent may not be counted toward the 60 calendar days for completion of an initial evaluation under the Evaluation Procedures guidelines.

### **When Despite Reasonable Efforts, Consent is Not Obtained for the Initial Evaluation of a Child Who is Home Schooled or Private Schooled**

*20 USC §1414(a)(1)(D)(ii)(I), 1414(a)(1)(D)(iii)(II), 1414(a)(1)(D)(ii)(III), 34 CFR Part 300.300(a)(2), 300.300(a)(2)(i), 300.300(a)(2)(ii), 300.300(a)(2)(iii), 300.300(a)(3)(i), 300.300(a)(3)(ii), 300.300(d)(5), 300.322(d)*

The LEA must make reasonable efforts to obtain informed consent for an initial evaluation.

If the parent of a child who is home schooled or placed in a private school at parental expense does not provide consent for the initial evaluation or fails to respond to the LEA's request for consent for evaluation, the LEA:

- May not pursue the initial evaluation of the child by utilizing the procedural safeguards (including the mediation or the due process procedures) in order to obtain agreement or a ruling that the evaluation may be conducted; and
- Is not required to consider the child as eligible for services under the Proportionate Share Funding for Parentally-Placed Private School Child and Private Schools guidelines.

### **When Despite Reasonable Efforts, Consent is Obtained for the Initial Evaluation of a Child who is a Ward of the State**

*20 USC §1414(a)(1)(D)(ii)(I), 1414(a)(1)(D)(iii)(II), 1414(a)(1)(D)(ii)(III), 34 CFR Part 300.300(a)(2), 300.300(a)(2)(i), 300.300(a)(2)(ii), 300.300(a)(2)(iii), 300.300(a)(3)(i), 300.300(a)(3)(ii), 300.300(d)(5), 300.322(d)*

The LEA must make reasonable efforts to obtain informed consent for an initial evaluation.

If the child is a ward of the state and is not residing with child's Parent, the LEA is not required to obtain informed consent from the parent if:

- Despite reasonable efforts to do so, the LEA cannot discover the whereabouts of the parent of the child;
- The rights of the parents of the child have been terminated in accordance with state law; or
- The rights of the parent to make educational decisions have been substituted by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

### **When Despite Reasonable Efforts, Consent is Not Obtained for the Initial Evaluation of a Child who is Not a Ward of the State, Private Schooled, or Home Schooled**

*20 USC §1414(a)(1)(D)(ii)(I), 1414(a)(1)(D)(iii)(II), 1414(a)(1)(D)(ii)(III), 34 CFR Part 300.300(a)(2), 300.300(a)(2)(i), 300.300(a)(2)(ii), 300.300(a)(2)(iii), 300.300(a)(3)(i), 300.300(a)(3)(ii), 300.300(d)(5), 300.322(d)*

The LEA must make reasonable efforts to obtain informed consent for an initial evaluation.

If the parent fails to respond or refuses to consent to an initial evaluation:

- The LEA may, but it is not required to, pursue the initial evaluation of the child by using the procedural safeguards (including the mediation or the due process procedures) in order to obtain agreement or a ruling that the evaluation may be conducted; and
- The LEA does not violate its obligation under Child Find Duty and Evaluation Procedures, if it declines to pursue the evaluation.

## **Consent for Services**

*Authorities: 20 U.S.C. § 1414; 34 C.F.R. Part 300*

*20 USC §1414(a)(1)(D), 1414(a)(1)(D)(i)(II), 34 CFR Part 300.300(b)(1), 300.300(b)(2), 300.300(d)(5), 300.322(d), 300.9(a), 300.9(b), 300.9(c)(1), 300.9(c)(2)*

The LEA must comply with the Parent and Adult Student guidelines, as appropriate.

The LEA must comply with the Prior Written Notice guidelines.

The LEA must obtain informed consent from the Parent before initially providing special education and related services to the child.

## **Elements of Consent for the Initial Provision of Services**

The "informed consent" that the LEA must obtain before the initial provision of special education and related services means:

- The parent has been fully informed of all information relevant to the initial provision of special education and related services in his or her native language or other mode of communication;
- The consent describes the initial provision of special education and related services;
- The consent lists the records (if any) that will be released and to whom;
- The parent understands and agrees in writing to the LEA carrying out the initial provision of special education and related services;
- The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; and
- The parent understands that if the parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

## **When Consent is not Obtained, Despite Reasonable Efforts**

*20 USC §1414(a)(1)(D)(ii)(II), 1414(a)(1)(D)(ii)(III), 34 CFR Part 300.300(b)(3), 300.300(b)(4), 300.300(b)(4)(i), 300.300(b)(4)(ii)*

The LEA must make reasonable efforts to obtain informed consent for the initial provision of services.

If the parent refuses to respond to a request to provide consent or refuses to consent to the receipt of special education and related services, the LEA:

- May not use the Procedural Safeguards (including the mediation or the due process procedures) in order to obtain agreement or a ruling that services may be provided to the child;
- Will not be considered to be in violation of the requirement to make available a FAPE to the child for the failure to provide the child with the special education and related services for which the LEA requests consent; and

- Is not required to convene an ARD committee meeting or develop an IEP for the child, as defined in the Rule of Construction guidelines.

## **When Consent for Services is Revoked**

*34 CFR Part 300.300*

Revocation of consent by a parent for the continued provision of special education and related services must be in writing.

If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent for the continued provision of special education and related services, the LEA:

- May not continue to provide special education and related services to the child;
- Must provide prior written notice before ceasing the provision of special education and related services;
- May not use the procedural safeguards (including the mediation procedures or the due process procedures) in order to obtain agreement or a ruling that the services may be provided to the child;
- Will not be considered to be in violation of the requirement to make a FAPE available to the child because of the failure to provide the child 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 for the child, as defined in Rule of Construction.

## **Consent for Reevaluation**

*Authorities: 20 U.S.C. § 1414; 34 CFR. Part 300; Texas Education Code*

The LEA must comply with the Parent and Adult Student guidelines, as appropriate.

The LEA must comply with the Prior Written Notice guidelines.

The LEA must obtain informed consent from the parent prior to conducting any reevaluation of a child with a disability.

## **Actions that Do Not Constitute Evaluation**

*20 USC §1414(a)(1)(E), 1414(c)(1), 34 CFR part 300.302, 300.300(d)(1), 300.300(d)(1)(i), 300.300(d)(1)(ii)*

The following actions do not constitute evaluation:

- Screening to determine strategies for curriculum implementation;
- Conducting a REED as a part of an initial evaluation or a reevaluation; and
- Administering a test or other evaluation that is administered to all children.

## **Elements of Consent for a Reevaluation**

*20 USC §1414(c)(3), 34 CFR part 300.9(a), 300.9(b), 300.9(c)(1), 300.9(c)(2), 300.300(a)(1)(iii), 300.300(c)(1)(i), 300.300(d)(5), 300.322(d)*

The "informed consent" that the LEA must obtain to conduct a reevaluation means:

- The parent has been fully informed of all information relevant to the reevaluation in his or her native language or other mode of communication;
- The consent describes the reevaluation;

- The consent lists the records (if any) that will be released and to whom;
- The parent understands and agrees in writing to the LEA carrying out the reevaluation;
- The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime; and
- The parent understands that if the parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

### **Information and Consent for Certain Psychological Examinations or Tests**

*TEC 29.041(a-c); 34 CFR 300.300(c)(1); TEC 29.004(a)(c); 20 USC 1414(a)(1)(C)(i)*

On request of a child's parent, before obtaining the parent's consent for the administration of any psychological examination or test to the child that is included as part of the evaluation of the child's need for special education, the LEA must provide to the child's parent the name and type of the examination or test, and an explanation of how the examination or test will be used to develop an appropriate individualized education program for the child:

- If the LEA determines that an additional examination or test is required for the evaluation of a child's need for special education after obtaining consent from the child's parent, the LEA must provide the required information to the child's parent regarding the additional examination or test and its use, and must obtain additional consent for the examination or test:
  - If a parent does not give consent for the additional examination or test within 20 calendar days after the date the LEA provided to the parent the required information about the additional examination or test and its use, the parent's consent is considered denied.

### **When Despite Reasonable Efforts, the Parent Fails to Respond**

*20 USC §1414(a)(1)(D)(ii)(I), 1414(a)(1)(D)(iii)(II), 1414(a)(1)(D)(ii)(III), 34 CFR Part 300.300(a)(2), 300.300(a)(2)(i), 300.300(a)(2)(ii), 300.300(a)(2)(iii), 300.300(a)(3)(i), 300.300(a)(3)(ii), 300.300(d)(5), 300.322(d)*

The LEA must make reasonable efforts to obtain informed consent for a reevaluation.

Parental consent need not be obtained if the LEA can demonstrate:

- The LEA has taken reasonable measures to obtain such consent; and
- The parent failed to respond.

### **When Despite Reasonable Efforts, Consent is not obtained for the Reevaluation of a Child Who is Home Schooled or Private Schooled**

*20 USC §1414(a)(1)(D)(ii)(I), 1414(a)(1)(D)(iii)(II), 1414(a)(1)(D)(ii)(III), 34 CFR Part 300.300(a)(2), 300.300(a)(2)(i), 300.300(a)(2)(ii), 300.300(a)(2)(iii), 300.300(a)(3)(i), 300.300(a)(3)(ii), 300.300(d)(5), 300.322(d)*

The LEA must make reasonable efforts to obtain informed consent for a reevaluation.

If the parent of a child who is home schooled or placed in a private school at parental expense does not provide consent for the reevaluation or fails to respond to the LEA's request for consent for reevaluation, the LEA:

- May not pursue the reevaluation of the child by utilizing the procedural safeguards (including the mediation or the due process procedures) in order to obtain agreement or a ruling that the evaluation may be conducted; and
- Is not required to consider the child as eligible for services under the Proportionate Share Funding for Parentally-Placed Private School Child and Private Schools frameworks.

### **When Despite Reasonable Efforts, Consent is not Obtained for the Reevaluation of a Child Who is not Home Schooled or Private Schooled**

*20 USC §1414(a)(1)(D)(ii)(I), 1414(a)(1)(D)(iii)(II), 1414(a)(1)(D)(ii)(III), 34 CFR Part 300.300(a)(2), 300.300(a)(2)(i), 300.300(a)(2)(ii), 300.300(a)(2)(iii), 300.300(a)(3)(i), 300.300(a)(3)(ii), 300.300(d)(5), 300.322(d)*

The LEA must make reasonable efforts to obtain informed consent for a reevaluation.

If the parent refuses to consent to the reevaluation:

- The LEA may, but is not required to, pursue the reevaluation by using the procedural safeguards (including the mediation or due process procedures) in order to obtain agreement or a ruling that the evaluation may be conducted; and
- The LEA does not violate its obligation under Child Find Duty and Evaluation Procedures, if it declines to pursue the reevaluation.

### **Consent to Excuse Member from Attending ARD Committee Meeting**

*Authorities: 34 C.F.R. Part 300; 19 T.A.C. Chapter 89*

The LEA must comply with the Parent and Adult Student guidelines, as appropriate.

The LEA must obtain informed consent from the parent before excusing a member from attending an admission, review and dismissal (ARD) committee meeting (in whole, or in part) as provided in the ARD Committee Membership guidelines.

### **Elements of Consent for Excusal**

*34 CFR part 300.9, 300.9(a), 300.9(b), 300.9(c)(1), 300.9(c)(2), 300.321(e)(2)(i), 19 Texas Administrative Code (TAC) §89.1050(c)(5)*

The "informed consent" that the LEA must obtain to excuse a member from attending an ARD committee meeting (in whole or part) means:

- The parent has been fully informed of all information relevant to the excusal of the member from attending the ARD meeting in his or her native language or other mode of communication;
- The parent understand and agrees in writing to the excusal of the ARD member from attending the ARD (in whole or part);
- The consent describes the excusal of the member from attending the ARD committee meeting;
- The consent lists the records (if any) that will be released, and to whom;
- The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; and
- The parent understands that if the parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was revoked).

- The parent understands and agrees in writing to the LEA accessing the public benefits or insurance program in which the child participates;
- The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; and
- The parent understands that if the parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

## **Consent to Access Public Benefits**

*Authorities: 20 U.S.C. § 1412; 34 C.F.R. Part 300; OSEP Letter to State Directors of Special Education (May 3, 2007)  
20 USC §1412(a)12(B)(i), 1412(e), 34 CFR part 300.154(d)*

The LEA must comply with the Parent and Adult Student guidelines, as appropriate.

The LEA must comply with the Use of IDEA Part B Formula Amounts in General guidelines.

The LEA may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under the IDEA, as permitted under the public benefits or insurance program, except as provided in this guideline.

The LEA must obtain informed consent from the parent each time that access to public benefits or an insurance program is sought.

## **Elements of Consent to Access Public Benefits**

*20 USC §1412(a)12(B)(i), 1412(e), 34 CFR part 300.154(d)(2)(i), 300.154(d)(2)(ii), 300.154(d)(2)(iii)(A), 300.154(d)(2)(iii)(B), 300.154(d)(2)(iii)(C), 300.154(d)(2)(iii)(D), 300.154(d)(2)(iv)(A), 300.154(d)(2)(iv)(B), 300.9(a), 300.9(b), 300.9(c)(1), 300.9(c)(2)*

The "informed consent" that the LEA must obtain to access public benefits means:

- The parent has been fully informed of all information relevant to the LEA's use of public benefits or insurance in his or her native language or other mode of communication, including that the LEA may not:
  - Require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive a FAPE;
  - Require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim;
  - Use a child's benefits under a public benefits or insurance program if that use would decrease available lifetime coverage or any other insured benefit;
  - Use a child's benefits under a public benefits or insurance program if that use would result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;
  - Use a child's benefits under a public benefits or insurance program if that use would increase premiums or lead to the discontinuation of benefits or insurance; and
  - Use a child's benefits under a public benefits or insurance program if that use would risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures;

- The parent is informed that the parent's refusal to allow access to public benefits or an insurance program in which the child participates does not relieve the LEA of its responsibility to ensure that all required services are provided at no cost to the parents;
- The consent describes the activity of the LEA accessing public benefits or an insurance program;
- The consent lists the records (if any) that will be released and to whom;
- The parent understands and agrees in writing to the LEA accessing the public benefits or insurance program in which the child participates;
- The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; and
- The parent understands that if the parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

## **Consent to Access Private Insurance**

*Authorities: 34 C.F.R. Part 300*

The LEA must comply with the Parent and Adult Student guidelines, as appropriate.

The LEA must comply with the Use of IDEA Part B Formula Amounts in General guidelines.

The LEA must obtain informed consent from the parent each time the LEA proposes to access the parent's private insurance proceeds.

## **Elements of Consent to Access Private Insurance**

*34 CFR Part 300.9(a), 300.9(b), 300.9(c)(1), 300.9(c)(2), 300.154(e)(1), 300.154(e)(2)(i), 300.154(e)(2)(ii)*

The "informed consent" that the LEA must obtain to access private insurance means:

- The parent has been fully informed of all information relevant to the LEA accessing the parent's private insurance in his or her native language or other mode of communication;
- The parent is informed that the parent's refusal to permit the LEA to access their private insurance does not relieve the LEA of its responsibility to ensure that all required services are provided at no cost to the parents;
- The consent describes the activity of the LEA accessing the parent's private insurance;
- The consent lists the records (if any) that will be released and to whom;
- The parent understands and agrees in writing to the LEA carrying out accessing the parent's private insurance;
- The parent understands that the granting of consent is voluntary on the part or the parent and may be revoked at any time; and
- The parent understands that if the parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

## **Consent to Transfer Assistive Technology Devices**

*Authorities: 34 C.F.R. Part 300; Texas Education Code; 19 T.A.C Chapter 89*

*34 CFR Part 300.9(a), 300.9(b), 300.9(c)(1), 300.9(c)(2), 19 TAC §89.1056(b), Texas Education Code (TEC) §30.0015(a)(3), 30.0015(b), 30.0015(b)(1), 30.0015(b)(2), 30.0015(b)(3), 30.0015(c)(3)*

The LEA must comply with the Parent, Adult Student, and Administration of Equipment guidelines, as appropriate.

"Assistive technology device" (ATD) and "transfer" are defined in the Administration of Equipment guidelines.

Before transferring an ATD, the LEA must, through a transfer agreement that incorporates the standards of the state, obtain informed consent from the parent or the adult student if the adult student has the legal capacity to enter into a contract.

### **Elements of Consent to Transfer ATDs**

*Authorities: 34 C.F.R. Part 300; Texas Education Code; 19 T.A.C Chapter 89*

*34 CFR Part 300.9(a), 300.9(b), 300.9(c)(1), 300.9(c)(2), 19 TAC §89.1056(b)(2), TEC §30.0015(c)(3), 30.0015(b), 30.0015(b)(1), 30.0015(b)(2), 30.0015(c)(3)*

The procedures employed by the LEA in obtaining informed consent to transfer an ATD must be consistent with the procedures employed by the LEA to obtain parental consent for an initial evaluation or reevaluation.

The "informed consent" that the LEA must obtain to transfer an ATD means:

- The parent has been fully informed of all information relevant to the transfer of the assistive technology device in his or her native language or other mode of communication;
- The parent or adult student understands and agrees in writing to the transfer of the assistive technology device;
- The consent describes the transfer of the assistive technology device;
- The consent lists the records (if any) that will be released and to whom;
- The parent or adult student understands that the granting of consent is voluntary on the part of the parent or adult student and may be revoked at any time; and
- The parent understands that if the parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

### **When Despite Reasonable Efforts, Consent is not Obtained**

*34 CFR Part 300.300(c)(2), 300.300(d)(5), 300.322(d), 19 TAC §89.1056(b)(2)*

Informed parental or adult student consent need not be obtained if the LEA can demonstrate:

- The LEA has taken reasonable measures to obtain that consent; and
- The parent or adult student failed to respond.

### **Consent for Disclosure of Confidential Information**

*Authorities: 20 U.S.C. § 1417; 34 C.F.R. Parts 99, 300*

*20 USC §1417(c), 34 CFR Part 99.3, 300.321(b)(3), 300.622(a), 300.622(b)(2), 300.622(b)(3)*

The LEA must comply with the Parent and Adult Student guidelines, as appropriate. The LEA must comply with the Records guidelines.

The LEA must obtain informed consent from the parent before personally identifiable information is disclosed to parties except when consent is not required to disclose information:

- "Disclosure" means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record.

Circumstances when consent is required to disclose confidential information include:

- When disclosure is to officials of agencies providing or paying for transition services;
- When the LEA invites a representative of any participating agency to be part of the ARD committee consistent with the ARD Committee Membership guidelines, because that public agency is likely to be responsible for providing or paying for transition services; and
- Between officials of the private school located outside of the LEA where the parent resides and the LEA, if a child is enrolled or is going to enroll in the private school.

### **Elements of Consent to Disclose Confidential Information**

*34 CFR Part 99.30(a), 99.30(b)(1), 99.30(b)(2), 99.30(b)(3), 99.30(d), 300.9, 300.9(a), 300.9(b), 300.9(c)(1), 300.9(c)(2)*

The "informed consent" that the LEA must obtain to disclose confidential information means:

- The parent has been fully informed of all information relevant to the disclosure of confidential information in his or her native language or other mode of communication, including:
  - Specifying the records that may be disclosed;
  - Stating the purpose of the disclosure; and
  - Identifying the party or class of parties to whom the disclosure may be made;
- The parent understands and agrees in writing to the LEA disclosing the confidential information;
- The consent is signed and dated;
- The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; and
- The parent understands that if the parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

### **Transfer Students**

*Authorities: 20 U.S.C. §§ 1232g, 1414; 34 C.F.R. Parts 99, 300; Texas Education Code; 19 TAC Chapter 89  
20 United States Code (USC) §1414(d)(2)(C)(ii), 1414(d)(2)(C)(ii)(I), 34 Code of Federal Regulations (CFR) Part 99.31(a)(2), 99.34, 300.323(g), 300.323(g)(1), 300.323(g)(2), Texas Education Code (TEC) §25.002*

The LEA must comply with Parent and Adult Student guidelines, as appropriate.

### **Transmittal of Records (TREx)**

*34 CFR 99.31(a)(2); 99.34; 300.323(g)(1-2); 20 USC 1414(d)(2)(c)(ii)(I); TEC 25.002; 25.007(b)(1); TAC 89.1050(f)(4)*  
The FERPA does not require the child's new and previous LEAs to obtain parental consent before requesting or sending the child's special education records if the disclosure is conducted in accordance with the When Consent is Not Required to Disclose Information guidelines.

To facilitate the transition for a child with a disability:

- The new LEA in which the child enrolls must take reasonable steps to promptly obtain the child's record from the previous LEA in which the child was enrolled, including:

- The IEP and supporting documents; and
- Any other records relating to the provision of special education or related services to the child;
- The previous LEA in which the child was enrolled must take reasonable steps to
  - Promptly respond to such request from the new LEA by furnishing the new LEA with a copy of the child's records, including the child's special education records:
    - Not later than the 30th calendar day after the child was enrolled in the new LEA; or
    - For children in substitute care, not later than the 14th day after the date the child begins enrollment at the school.

### **When an Evaluation is Pending**

*20 USC §1414(a)(1)(C)(ii), 1414(b)(3)(D), 34 CFR Part 300.301(d), 300.301(e), 300.301(d)(2), 300.304(c)(5); TAC 89.1050(f)(1); TEC 29.004*

The LEA must ensure that assessments of children with disabilities who transfer from one LEA to another LEA in the same academic year must be coordinated, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

If a child enrolls in the new LEA after the 60-day timeframe for an initial evaluation of the child has begun and before a determination by the child's previous LEA as to whether the child is a child with a disability, the 60-day evaluation procedures timeframe does not apply to the new LEA if:

- The LEA is making sufficient progress to ensure a prompt completion of the evaluation;
- The parent and LEA agree to a specific time when the evaluation will be completed; and
- The initial evaluation is completed not later than the 60th calendar day following the date on which the new LEA receives consent for initial evaluation..

### **IEP for a Child with a Disability who Transfers within the State**

*20 USC §1414(d)(2)(C)(i)(I), 34 CFR part 300.323(e); TAC 89.1050(f)(2)*

With regard to the status of the child, the new LEA must verify that the child:

- Is a child with a disability;
- Transferred LEAs within the same academic year; and
- Had an IEP in effect in the previous LEA.

With regard to interim services to the child, the new LEA, in consultation with the parents, must:

- Provide the child with FAPE including services comparable to those described in the IEP from the previous LEA.

With regard to the IEP of the child, the new LEA must:

- Within 30 school days from the date the child is verified as being a child eligible for special education services either:
  - Adopt the IEP from the previous LEA; or
  - Develop, adopt, and implement a new IEP that is consistent with the ARD COMMITTEE guidelines.

## **IEP for a Child with a Disability who Transfers from Outside the State**

*20 USC §1414(d)(2)(C)(i)(II), 34 CFR Part 300.323(f), 300.323(f)(1), 300.323(f)(2); TAC 89.1050(f)(3)*

With regard to the status of the child, the new LEA must verify the child:

- Is a child with a disability;
- Transferred LEAs within the same academic year; and
- Had an IEP in effect in other state.

With regard to interim services to the child, the new LEA, in consultation with the parents, must:

- Provide the child with a FAPE including services comparable to those described in the IEP from the previous LEA.

With regard to the IEP of the child, the new LEA must:

- Within 30 school days from the date the child is verified as being a child eligible for special education services either:
  - Adopt the IEP from the previous LEA; or
  - Develop, adopt, and implement a new IEP that is consistent with the ARD Committee guidelines.

## **Incarcerated Students**

*Authorities: 20 U.S.C. §§ 1412, 1414, 1415; 34 C.F.R. Part 300*

### **Limitations to a Free Appropriate Public Education (FAPE)**

*20 United States Code (USC) §1412(a)(1)(A), 1412(a)(1)(B)(ii), 1412(a)(1)(B)(ii)(I), 1412(a)(1)(B)(ii)(II), 34 CFR Part 300.8, 300.101(a), 300.102(a)(2)(i), 300.102(a)(2)(i)(A), 300.102(a)(2)(i)(B), 300.102(a)(2)(ii)(A), 300.102(a)(2)(ii)(B)*

The obligation to make a FAPE available to all children with disabilities does not apply to children aged 18 through 21 whom, in the last educational placement prior to incarceration in an adult correctional facility:

- Where they were not actually identified as being a child with a disability; and
- Did not have an IEP.

The obligation to make a FAPE available to children with disabilities aged 18 through 21 does apply to children who:

- Had been identified as a child with a disability and had received services in accordance with an IEP, but who left school prior to their incarceration; or
- Did not have an IEP in their last educational setting, but who had actually been identified as a child with a disability.

### **Children in Adult Prisons**

*20 USC §1412(a)(5)(A), 1414(d)(1)(A), 1414(d)(7)(A)(i), 1414(d)(7)(A)(ii), 1414(d)(7)(B), 34 CFR Part 300.324(d)(1), 300.324(d)(1)(i), 300.324(d)(1)(ii), 300.324(d)(2)*

For children with disabilities who are convicted as adults under state law and incarcerated in adult prisons:

- The requirements related to State and District-wide Assessments do not apply; and

- The requirements related to transition services do not apply with respect to children whose age eligibility under the IDEA will end before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

If the state has demonstrated a bona fide security or compelling enological interest that cannot otherwise be accommodated, the child's admission, review, and dismissal committee may modify the child's IEP or placement notwithstanding the least restrictive environment and IEP content requirements of the IDEA.

## **Transfer of Parental Rights**

*20 USC §1415(m)(1), 1415(m)(1)(D), 34 CFR part 300.520(a)(2)*

All rights accorded to parents under the IDEA, including the right to receive notice, transfer to adult students at age 18 who are incarcerated in an adult or juvenile federal, state, or local correctional institution, unless the parent or other individual has been granted guardianship under the Texas Probate Code.

Notice of the transfer of parental rights to the incarcerated student must be given to the parent and the incarcerated student (which need not contain the elements of prior written notice, but must include a statement that parental rights have transferred to the adult student and provide contact information for the parties to use in obtaining additional information).

The local educational agency must comply with the Adult Student guidelines.

## **Private Schools**

*Authorities: 20 U.S.C. §§ 1401, 1412; 34 C.F.R. Parts 77, 300; 19 T.A.C. Chapter 89; TEA Guidance on Parentally-Placed Private School Children with Disabilities*

This legal framework applies to parentally-placed private school children with disabilities.

## **Definitions**

The term "parentally-placed private school children with disabilities" means children with disabilities enrolled by their parents in a private, including religious, school or facility that meets the definition of "elementary school" or "secondary school".

The term "elementary school" means a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under state law.

The term "secondary school" means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under state law, except that it does not include any education beyond grade 12.

The term "nonprofit," as applied to an agency, organization, or institution, means that it is owned or operated by one or more corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity.

The term "services plan" means a written statement that describes the special education and related services the local educational agency (LEA) will provide to the parentally-placed private school child with a disability who has been designated to receive services, including the location of the services and any transportation necessary.

## **Considerations**

34 CFR 300.131(a); 300.132(a); 300.137(a); TAC 89.1096(a)(b)

No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

When the child with a disability who has been placed directly by parents in a private school is referred to the LEA, the LEA must convene an ARD committee meeting to determine whether the LEA can offer the child a FAPE.

The LEA is not responsible for providing educational services offered by the ARD committee for the child to receive a FAPE until such time as the child's parents choose to enroll the child in the LEA full time.

The child with a disability may receive some special education and related services, including direct services, if the LEA designates the child to receive services.

## **Child Find for Parentally-Placed Private School Children**

*20 United States Code (USC) §1412(a)(10)(A)(i)(II), 1412(a)(10)(A)(i)(V), 1412(a)(10)(A)(ii)(IV); 34 CFR 300.132(c)(1)(2)(3); 300.133(b)*

Each LEA must locate, identify, and evaluate all children with disabilities who are currently enrolled by their parents in private, including religious, elementary schools, and secondary schools located in the LEA.

To determine the number of parentally-placed children with disabilities attending private schools located in the LEA, the LEA must:

- Timely and meaningfully consult with representatives of private schools; and
- Conduct a thorough and complete Child Find process.

Each LEA must maintain in its records and provide to the TEA the following information related to parentally-placed private school children with disabilities:

- The number of children evaluated;
- The number of children determined to be children with disabilities; and
- The number of children served.

The LEA must comply with the Proportionate Share Funding for Parentally-Placed Private School Child guidelines when carrying out its obligations under the Child Find guidelines.

## **Consultation**

*20 USC §1412(a)(10)(A)(iii), 1412(a)(10)(A)(iii)(I), 1412(a)(10)(A)(iii)(II), 1412(a)(10)(A)(iii)(III), 1412(a)(10)(A)(iii)(IV), 1412(a)(10)(A)(iii)(V); 34 CFR 300.134(a)(c)(d)(1)(e)*

The LEA must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding:

- The Child Find process, including how parentally-placed private school children suspected of having a disability can participate equitably and how parents, teachers, and private school officials will be informed of the process;
- The determination of the proportionate amount of federal funds available to serve parentally-placed private school children with disabilities according to the Parentally-Placed Private School Child guidelines;
- The consultation process among the LEA, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how it will operate throughout the school year to ensure that parentally-placed private school children with disabilities identified through the Child Find process can meaningfully participate in special education and related services; and
- The provision of special education and related services, including how, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of:
  - The types of services, and alternative service delivery mechanisms;
  - How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children with disabilities; and
  - How and when decisions regarding services will be made.
- How, if the LEA disagrees with the views of private school officials on the provision or types of services (whether provided directly or through a contract), the LEA must provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.

### **Written Affirmation**

*20 USC §1412(a)(10)(A)(iv) ; 34 CFR 300.135(a)(b)*

When timely and meaningful consultation has occurred, the LEA must:

- Obtain a written affirmation signed by the representatives of participating private schools; or
- If such representatives do not provide written affirmation within a reasonable period of time, forward the documentation of the consultation process to the TEA.

### **Developing the Proportionate Share Services Plan**

*34 CFR 300.132(b); 300.137(b)(c)(1)(2); 300.138(a)(2)(b)(1-2); TAC 89.1096(d)*

After ensuring timely and meaningful consultation, the LEA must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.

If the LEA in which the private school is located designates a parentally-placed private school child, including an eligible child ages three or four whose parents declined dual enrollment, to receive special education and related services, the LEA must:

- Initiate and conduct meetings to develop, review, and revise a services plan for the child that describes the specific special education and related services that the child will receive in light of the services the LEA determined it would make available to parentally-placed private school children with disabilities;

- Ensure that a representative of the religious or other private school attends the meeting; and
- Use other methods to ensure the participation by the religious or other private school, including individual or conference telephone calls if the representative cannot attend.

Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

### **Implementation of the Proportionate Share Services Plan**

*34 CFR 300.139(a); 20 USC 1412(a)(10)(A)(i)*

When providing special education and related services for parentally-placed private school children with disabilities, the LEA must comply with the Proportionate Share Funding for Parentally-Placed Private School Child and Administration of Equipment guidelines.

Services may be provided on the premises of private, including religious, schools, to the extent consistent with law.

### **Use of Personnel to Provide Proportionate Share Services**

*34 CFR 300.138(c); 300.142(a)(1)(2); 20 USC 1412 (a)(10)(A)(vi)(I)(bb)*

The LEA must provide proportionate share services to parentally-placed private school children with disabilities:

- By employees of the LEA; or
- Through a contract with an individual, association, agency, organization, or other entity.

The LEA may use funds to make public school personnel available in other than public facilities consistent with the Proportionate Share Funding for Parentally-Placed Private School Child guidelines:

- To the extent necessary to provide services for parentally-placed private school children with disabilities; and
- If those services are not normally provided by the private school.

The LEA may use funds consistent with the Use of IDEA Part B Formula Amounts in General framework to pay for services of an employee of a private school to provide services for parentally-placed private school children with disabilities, if the employee performs the services:

- Outside of his or her regular hours of duty; and
- Under public supervision and control.

When LEA personnel provide proportionate share services to parentally-placed private school children with disabilities, the LEA must comply with the Highly Qualified Special Education Teachers requirements.

When private elementary school or secondary school teachers provide proportionate share services to parentally-placed private school children with disabilities, the private school teachers do not have to meet the Highly Qualified Special Education Teachers requirements.

## **Transportation Services**

*34 CFR 300.130(b)(1)(i)(A)(B); TAC 89.1096(e)*

If necessary for the parentally-placed private school child with a disability to benefit from or participate in the services determined in compliance with this framework, transportation must be provided:

- From the child's school or the child's home to a site other than the private school; and
- From the service site to the private school, or to the child's home, depending on the timing of the services.

The LEA is not required to provide transportation from the child's home to the private school.

The LEA must provide special transportation with federal funds only when the ARD committee determines that the condition of the child warrants the service in order for the child to receive the special education and related services (if any) set forth in IEP, and in compliance with the Funding guidelines.

## **Confidentiality**

The LEA must comply with the Consent for Disclosure of Confidential Information guidelines.

## **Right of the Private School Official to Submit a Complaint**

*20 USC §1412(a)(10)(A)(v)(I), 1412(a)(10)(A)(v)(II)*

A private school official has the right to submit a complaint to the TEA that the LEA did not:

- Engage in consultation that was meaningful and timely; or
- Give due consideration to the views of the private school official.

The complaining private school official must provide the basis of the noncompliance to the TEA.

The LEA must forward the appropriate documentation to the TEA.

If the private school official is dissatisfied with the TEA's decision, the official may submit a complaint to the United States secretary of education by providing basis of the noncompliance.

If a complaint is submitted to the United States secretary of education, the TEA will forward the appropriate documentation to the secretary.

## **Dual Enrollment**

*19 Texas Administrative Code (TAC) §89.1096(a)(1)(A)(B), 89.1096(c)(1)(2), 89.1096(d), 89.1096(f)*

Parents of an eligible child ages three or four have the right to "dual enroll" their child in both the public and private school:

- Beginning on the child's third birthday; and
- Continuing until whichever comes first:
  - The end of the school year in which the child turns five; or
  - The child is eligible to attend the LEA's kindergarten program.

The term "private school" is defined as a private elementary or secondary school, including any preschool, religious school, and institutional day or residential school that:

- Is a nonprofit entity; and

- Provides elementary or secondary education that incorporates an adopted curriculum designed to meet basic educational goals, including scope and sequence of courses, and formal review and documentation of children's progress.

In order to be considered a private school, a home school must provide elementary or secondary education that incorporates an adopted curriculum designed to meet basic educational goals, including scope and sequence of courses, and formal review and documentation of children's progress, but is not required to be a nonprofit entity.

The LEA where the child resides is responsible for providing special education and related services to the child whose parents choose dual enrollment.

The LEA must comply with the ARD Committee guidelines.

The child's ARD committee must develop an IEP designed to provide the child with a FAPE in the least restrictive environment appropriate for the child.

From the IEP, the parent and the LEA must determine, based on the requirements concerning placement in the Least Restrictive Environment guidelines and the policies and procedures of the LEA:

- Which special education and/or related services will be provided to the child; and
- The location where those services will be provided.

Complaints regarding the implementation of the components of the child's IEP that have been selected by the parent and the LEA may be filed with the TEA.

The procedures relating to due process hearings do not apply to complaints regarding the implementation of the components of the child's IEP that have been selected by the parent and the LEA.

### **Private School Placement when FAPE is at Issue**

*34 CFR 300.148*

When parents elect to place the child with a disability in a private school or facility due to disagreements about FAPE, additional protections apply under the procedural safeguards.

## **Discipline**

### **Authority of School Personnel**

*Authorities: 20 U.S.C. § 1415; 34 C.F.R. Part 300; Texas Education Code*

### **Authority to Remove for Less than 10 Consecutive School Days**

*20 United States Code (USC) §1415(k)(1)(B), 34 Code of Federal Regulations (CFR) Part 300.530(b)(1)*

School personnel may remove the child with a disability who violates the code of conduct from his or her current placement to an appropriate interim alternative educational setting (IAES), another setting, or suspension, for not more than 10 consecutive school days to the extent those alternatives are applied to children without disabilities.

School personnel may remove the child with a disability who violates the code of conduct from his or her current placement for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement.

### **Authority to Remove for More than 10 Consecutive School Days**

*20 USC §1415(k)(1)(C), 1415(k)(1)(D), 1415(k)(1)(G), 1415(k)(1)(H), 34 CFR Part 300.530(c), 300.530(d), 300.530(g), 300.530(h)*

School personnel may apply the relevant disciplinary procedures that would be applied to children without disabilities in the same manner and for the same duration as the procedures that would be applied to children without disabilities, if:

- In the manifestation determination review, the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability;
- Notification of a change of placement is given; and
- Services during periods of removal are provided.

School personnel must provide the parents of the child removed to a disciplinary alternative education program with written notice of the school's obligation to provide the child with an opportunity to complete coursework required for graduation that:

- Includes information regarding all methods available for completing the coursework; and
- States that the methods available for completing the coursework are available at no cost to the child.

School personnel may remove a student to an IAES without regard to whether the behavior is determined to be a manifestation of the child's disability, if:

- There are special circumstances; and
- The removal is for not more than 45 school days.

### **Limitation on General Authority**

*TEC 37.001(a)(7-8)(b)(1)*

The child with a disability may not be disciplined for bullying, harassment, or making hit lists until an ARD committee meeting has been held to review the conduct.

### **Change of Placement**

*Authorities: 20 U.S.C. §1415; 34 C.F.R. Part 300*

*20 USC §1415(k)(1)(A), 34 CFR part 300.530(a), 300.536(a)(1), 300.536(a)(2)*

School personnel must consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for a child with a disability who violates a student code of conduct.

A change of placement occurs if:

- The removal is for more than 10 consecutive school days; or
- The child has been subjected to a series of removals that constitute a pattern.

### **Pattern**

*34 CFR Part 300.536(a)(2), 300.536(a)(2)(i), 300.536(a)(2)(ii), 300.536(a)(2)(iii)*

The child has been subjected to a series of removals that constitute a pattern when:

- The series of removals total more than 10 school days in a school year;
- The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
- Additional factors to be considered are:
  - The length of each removal;
  - The total amount of time the child has been removed; and
  - The proximity of the removals to one another.

### **Decision**

*34 CFR Part 300.536(b)(1), 300.536(b)(2)*

The LEA's determination is subject to review through due process and judicial proceedings.

The LEA determines, on a case-by-case basis, whether a pattern of removals constitutes a change of placement.

### **Notification**

*34 CFR 300.530(e)(h); 300.536; 20 USC 1415(k)(1)(E)(H)*

On the date on which the decision is made to make a removal that constitutes a change of placement, the LEA must:

- Notify the parents of that decision; and
- Provide the parents the procedural safeguards notice.

A manifestation determination must be made within 10 school days of any decision to make a change of placement of a child with a disability because of a violation of a student code of conduct.

The LEA must comply with the services during periods of removal guidelines.

### **Manifestation Determination**

*Authorities: 20 U.S.C. § 1415; 34 C.F.R. Part 300; Texas Education Code  
20 USC §1415(k)(1)(E), 34 CFR Part 300.530(e)(1)*

A manifestation determination must be made within 10 school days of any decision to make a change of placement of a child with a disability because of a violation of a student code of conduct.

### **Membership and Meeting**

20 USC §1415(k)(1)(E)(i), 34 CFR Part 300.530(e)(1), Texas Education Code (TEC) §37.004(b)(4)

The manifestation determination must be made by the ARD committee with the following members:

- The LEA
- The parent; and
- The relevant members of the child's ARD committee:
  - As determined by the parent and the LEA.

## Information

20 USC §1415(k)(1)(E)(i), 34 CFR Part 300.530(e)(1)

The committee must review all relevant information in the student's file, including:

- The child's IEP;
- Any teacher observations; and
- Any relevant information provided by the parents.

## Determination

20 USC §1415(k)(1)(E)(i), 1415(k)(1)(E)(i)(I), 1415(k)(1)(E)(i)(II), 34 CFR Part 300.530(e)(1), 300.530(e)(1)(i), 300.530(e)(1)(ii), 300.530(e)(2)

The conduct is a manifestation of the child's disability if the committee determines that either one of the following conditions is met:

- If the conduct was caused by, or had a direct and substantial relationship to, the child's disability; or
- If the conduct in question was the direct result of the LEA's failure to implement the IEP.

When behavior is a manifestation of the child's disability, the LEA must comply with these guidelines. When Behavior is not a manifestation of the child's disability, the LEA must comply with the applicable guidelines.

## When Behavior is a Manifestation

Authorities: 20 U.S.C. § 1415; 34 C.F.R. Part 300; Texas Education Code

20 USC §1415(k)(1)(F), 1415(k)(1)(F)(i), 1415(k)(1)(F)(ii), 1415(k)(1)(F)(iii), 34 CFR part 300.530(e)(3), 300.530(f)(1), 300.530(f)(1)(i), 300.530(f)(1)(ii), 300.530(f)(2), TEC §37.004(b)

If the ARD committee determines in a manifestation determination review that the conduct was the direct result of the failure of the LEA to implement the IEP, the LEA must take immediate steps to remedy those deficiencies.

If the ARD committee determines in a manifestation determination review that the conduct was a manifestation of the child's disability, the ARD committee must either:

- Conduct a functional behavioral assessment (FBA):
  - Unless the LEA had conducted a FBA before the behavior that resulted in the change of placement occurred; and
  - Implement a behavioral intervention plan (BIP) for the child; or
- If a BIP already has been developed:
  - Review the BIP; and
  - Modify it, as necessary, to address the behavior.

If the ARD committee determines in a manifestation determination review that the conduct was a manifestation of the child's disability, the ARD committee must also:

- Return the child to the placement from which the child was removed:
  - Except as provided under special circumstances guidelines;
  - Unless the parent and the LEA agree to a change of placement as part of the modification of the BIP.

## **When Behavior is Not a Manifestation**

*Authorities: 20 U.S.C. § 1415; 34 C.F.R. Part 300  
20 USC §1415(k)(1)(C), 34 CFR Part 300.530(c)*

For a disciplinary change in placement that would exceed 10 consecutive school days, if the ARD committee determines in a manifestation determination review that the conduct was not a manifestation of the child's disability:

- School personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities;
- Except that services during periods of removal must be provided.

The LEA must comply with the Services during Periods of Removal guidelines.

## **Services During Periods of Removal**

*Authorities: 20 U.S.C. §1415; 34 C.F.R. Part 300; Texas Education Code*

### **Removals for Less than 10 Cumulative Days**

*34 CFR Part 300.530(d)(2), 300.530(d)(3)*

The LEA is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.

### **Removals for More than 10 Cumulative Days that are Not a Change of Placement**

*34 CFR Part 300.101(a), 300.530(b)(2), 300.530(d)(2), 300.530(d)(4)*

The LEA must conduct a change of placement analysis and comply with the Change of Placement guidelines.

After a child with disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement:

- School personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed for a FAPE:
  - To enable the child to continue to participate in the general education curriculum, although in another setting;
  - To enable the child to progress toward meeting the goals set out in the child's IEP; and

- Services may be provided in an interim alternative educational setting (IAES).

## **Removals that Are a Change of Placement**

*34 CFR 300.530(d)(1); 300.530(d)(4); 20 USC 1415(k)(1)(D)(ii)*

The LEA must comply with the Manifestation Determination guidelines.

When behavior is not a manifestation of the child's disability, or when a child with a disability is removed from the child's current placement due to special circumstances, the ARD committee must determine:

- Educational services for a FAPE which may be provided in an IAES:
  - To enable the child to continue to participate in the general education curriculum, although in another setting; and/or
  - To enable the child to progress toward meeting the goals set out in the child's IEP;
- As appropriate, a functional behavioral assessment;
- Behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur; and
- The IAES.

## **Special Circumstances**

*Authorities: 18 U.S.C. §§930, 1365; 21 U.S.C. §812; 20 U.S.C. §1415; 34 C.F.R. Part 300*

*18 USC §930(g)(2), 1365(h)(3), 20 USC §1415(k)(1)(G), 1415(k)(1)(G)(i), 1415(k)(1)(G)(ii), 1415(k)(1)(G)(iii), 21 USC §812 (Schedule I, Schedule II, Schedule III, Schedule IV, Schedule V), 34 CFR Part 300.530(g), 300.530(g)(1), 300.530(g)(2), 300.530(g)(3), 300.530(i)(1), 300.530(i)(2), 300.530(i)(3), 300.530(i)(4)*

Special circumstances exist if the child:

- Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the LEA:
  - The term "dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length;
- Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the LEA:
  - Controlled substance means a drug or other substance identified under 21 USC §812 schedules I, II, III, IV, or V;
  - Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of federal law; or
- Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the LEA:
  - The term "serious bodily injury" means bodily injury which involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

If special circumstances exist, the LEA may remove a child with a disability under the special circumstances provisions of Authority of School Personnel guidelines. If the removal is for more than 10 consecutive school days, the LEA must comply with the Change of Placement Determination guidelines and conduct a manifestation review:

- School personnel may remove a student to an interim alternative educational setting (IAES) without regard to whether the behavior is determined to be a manifestation of the child's disability;
  - As long as the removal is for not more than 45 school days if the behavior is a manifestation of the child's disability; and
- Services during periods of removal must be determined and provided.

## **Restraint and Time-Out**

*Authorities: Texas Education Code; Texas Penal Code; 19 T.A.C. Chapter 89*

*19 Texas Administrative Code (TAC) §89.1053(j), 89.1053(l), Texas Education Code (TEC) §37.0021(g)*

It is the policy of this state to treat with dignity and respect all children, including children with disabilities who receive special education services.

Any behavior management technique and/or discipline management practice must be implemented in such a way as to protect the health and safety of the child and others. No discipline management practice may be calculated to inflict injury, cause harm, demean, or deprive the child of basic human necessities.

### **Applicability**

This guideline generally applies to all school employees, volunteers, or independent contractors. This framework also applies to a peace officer only if the peace officer:

- Is employed or commissioned by a school district; or
- Provides, as a school resource officer, a regular police presence on a school district campus under a memorandum of understanding between the district and a local law enforcement agency.

This guideline does not apply to juvenile probation, detention, or corrections personnel; or an educational services provider with whom the child is placed by a judicial authority, unless the services are provided in an educational program of a school district.

### **Confinement**

*Texas Penal Code (TPC) §46.01(3), 46.01(6), 46.01(1), 46.05, 19 TAC §89.1053(a), TEC §37.0021(a), 37.007(a)(1), 37.0021(f), 37.0021(f)(1), 37.0021(f)(2)*

The child with a disability, who receives special education services must not be confined in a locked box, locked closet, or other specially designed locked space as either a discipline management practice or a behavior management technique.

This section does not prevent the child's locked, unattended, confinement in an emergency situation while awaiting the arrival of law enforcement personnel if:

- The child possesses a weapon; and

- The confinement is necessary to prevent the child from causing bodily harm to the child or another person.

## **Restraint**

19 TAC §89.1053(b)(1)(A)(B),(2); §89.1053 (c)(1-4); §89.1053 (d)(1-4); §89.1053 (e)(1-5)(A)(B)(C)(D)(E)(F)(G)(H)(I); §89.1053(f)(1-4)§89.1053(k), TEC §37.0021(b)(1)

"Restraint" means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of the child's body.

"Emergency" means a situation in which a child's behavior poses a threat of:

- Imminent, serious, physical harm to the child or others; or
- Imminent, serious property destruction.

A school employee, volunteer or independent contractor may use restraint only in an "emergency" and with the following limitations:

- Restraint must be limited to the use of such reasonable force as is necessary to address the emergency;
- Restraint must be discontinued at the point at which the emergency no longer exists;
- Restraint must be implemented in such a way as to protect the health and safety of the student and others; and
- Restraint must not deprive the child of basic human necessities.

Training for school employees, volunteers, or independent contractors must be provided according to the following requirements:

- A core team of personnel on each campus must be trained in the use of restraint, and the team must include a campus administrator or designee and any general or special education personnel likely to use restraint;
- Personnel called upon to use restraint in an emergency and who have not received prior training must receive training within 30 school days following the use of restraint;
- Training on use of restraint must include prevention and de-escalation techniques and provide alternatives to the use of restraint; and
- All trained personnel must receive instruction in current professionally accepted practices and standards regarding behavior management and the use of restraint.

The following documentation requirements must be met in a case in which restraint is used by school employees, volunteers, or independent contractors:

- On the day restraint is utilized, the campus administrator or designee must be notified verbally or in writing regarding the use of restraint;
- On the day restraint is utilized, a good faith effort must be made to verbally notify the parent regarding the use of restraint;
- Written notification of the use of restraint must be placed in the mail or otherwise provided to the parent within one school day of the use of restraint;
- Written documentation regarding the use of restraint must be placed in the student's special education eligibility folder in a timely manner so the information is available to the admission, review, and dismissal (ARD) committee when it considers the impact of the student's behavior

on the student's learning and/or the creation or revision of a behavioral intervention plan (BIP); and

- Written notification to the parent(s) and documentation to the student's special education eligibility folder must include the following:
  - Name of the student;
  - Name of the staff member(s) administering the restraint;
  - Date of the restraint and the time the restraint began and ended;
  - Location of the restraint;
  - Nature of the restraint;
  - A description of the activity in which the student was engaged immediately preceding the use of restraint;
  - The behavior that prompted the restraint;
  - The efforts made to de-escalate the situation and alternatives to restraint that were attempted; and
  - Information documenting parent contact and notification.

Physical restraint does not include the use of:

- Physical contact or appropriately prescribed adaptive equipment to promote normative body positioning and/or physical functioning;
- Limited physical contact with a student to promote safety (e.g., holding a child's hand), prevent a potentially harmful action (e.g., running into the street), teach a skill, or provide comfort;
- Limited physical contact or appropriately prescribed adaptive equipment to prevent a student from engaging in ongoing, repetitive self-injurious behaviors; or
- Seat belts and other safety equipment used to secure students during transportation.

Cumulative data regarding the use of restraint must be reported through the Public Education Information Management System (PEIMS).

### **Time-out**

*19 TAC §89.1053(b)(3)(A)(B); § 89.1053(g)(1-3), §89.1053(h)(1-4); TEC §37.0021(b)(3)(A)(B)*

"Time-out" means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the child is separated from other children for a limited period in a setting:

- That is not locked; and
- From which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.

A school employee, volunteer or independent contractor may use time-out with the following limitations:

- Physical force or threat of physical force must not be used to place a student in time-out;
- Time-out must only be used in conjunction with an array of positive behavior intervention strategies and techniques and must be included in the student's IEP and/or BIP if it is utilized on a recurrent basis to increase or decrease a targeted behavior; and

- Use of time-out must not be implemented in a fashion that precludes the ability of the child to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the child's IEP.

Training for school employees, volunteers, or independent contractors must be provided according to the following requirements:

- General or special education personnel who implement time-out based on requirements established in a student's IEP and/or BIP must be trained in the use of time-out;
- Newly identified personnel called upon to implement time-out based on requirements established in a student's IEP and/or BIP must receive training in the use of time-out within 30 school days of being assigned the responsibility for implementing time-out;
- Training on the use of time-out must be provided as part of a program which addresses a full continuum of positive behavioral intervention strategies, and must address the impact of time-out on the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in child's IEP; and
- All trained personnel must receive instruction in current professionally accepted practices and standards regarding behavior management and the use of time-out.

Necessary documentation or data collection regarding the use of time-out, if any, must be addressed in the IEP or BIP. The ARD committee must use any collected data to judge the effectiveness of the intervention and provide a basis for making determinations regarding its continued use.

## **Independent Education Evaluation**

*Authorities: 20 U.S.C. § 1415; 34 C.F.R. Part 300*

*TEC §28.0211, 28.0213(a), 28.0213(b), 28.0213(b)(1), 28.0213(b)(1)(A), 28.0213(b)(1)(B), 28.0213(b)(2), 28.0213(c), 28.0213(c)(1), 28.0213(c)(2)*

### **Federal and State Requirements**

The parents of a child with a disability have the right to obtain an independent educational evaluation (IEE) of the child, subject to the provisions of this framework:

- IEE means an evaluation conducted by a qualified examiner who is not employed by the LEA which is responsible for the education of the child.

When the parent requests an IEE, the LEA must provide:

- Information about where an IEE may be obtained; and
- The LEA CRITERIA for an IEE.

### **IEE at Public Expense**

*34 CFR 300.502(a)(3)(ii); 300.502(b)(1); 300.502(b)(5)*

A parent has the right to an IEE at public expense if the parent disagrees with an evaluation obtained by the LEA:

- Public expense means that the LEA either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent consistent with the provisions of the IDEA regarding the use of IDEA Part B formula amounts..

A parent is limited to only one IEE at public expense each time the LEA conducts an evaluation with which the parent disagrees.

## Conditions

*34 CFR 300.502(b)(2-4)(d); 300.507; 300.511; 300.514*

If a parent requests an IEE at public expense, the LEA must, without unnecessary delay, either:

- File a due process complaint to request a hearing to show that its evaluation is appropriate; or
- Ensure that an IEE is provided at public expense, unless the LEA demonstrates in a due process hearing that the evaluation obtained by the parent does not meet the LEA criteria.

The LEA may ask for the parent's reason why the parent objects to the public evaluation; however the LEA may not:

- Require the parent to provide an explanation; and
- Unreasonably delay either providing the IEE at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.

If the final decision from a due process hearing officer is that the LEA's evaluation is appropriate, the parent still has a right to an IEE, but not at public expense

If a hearing officer requests an IEE as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.

## LEA Criteria

*34 CFR 300.502(e)(1)*

If an IEE is at public expense, the criteria under which the evaluation is obtained must be:

- The same as the criteria that the LEA uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an IEE, including:
  - The location of the evaluation; and
  - The qualifications of the examiner.

Except for the LEA criteria, the LEA may not impose conditions or timelines related to obtaining an IEE at public expense.

## Results of IEE

*34 CFR 300.502(c)(1)(2)*

If the parent obtains an IEE at public expense or shares with the LEA an evaluation obtained at private expense, the results of the evaluation:

- Must be considered by the LEA, if it meets the LEA criteria, in any decision made with respect to the provision of a FAPE to a child; and
- May be presented by any party as evidence at a due process regarding the child.

## Personal Graduation Plan

*Authorities: Texas Education Code; 19 T.A.C. Chapter 89*

*19 Texas Administrative Code (TAC) §89.1050(a)(9), Texas Education Code (TEC) §28.0212(a), 28.0212(a)(1), 28.0212(a)(2), 28.0212(c), 28.0212(b), 28.0212(b)(1), 28.0212(b)(2), 28.0212(b)(3), 28.0212(b)(4), 28.0212(b)(5), 28.0213*

A child's IEP may be used as the child's personal graduation plan.

A personal graduation plan must be developed for any middle school, junior high, or high school child who:

- Does not perform satisfactorily on statewide assessments; or
- Is not likely to receive a high school diploma before the fifth school year following the child's enrollment in grade level nine, as determined by the LEA.

A personal graduation plan must address participation of the parent:

- Including consideration of the parent's educational expectations for the child.

A personal graduation plan must include:

- Educational goals for the child;
- Diagnostic information;
- Appropriate monitoring and intervention;
- Other evaluation strategies; and
- An intensive program of instruction.

A personal graduation plan must provide innovative methods to promote the child's advancement, including:

- Flexible scheduling;
- Alternate learning environments;
- On-line instruction; and
- Other interventions that are proven to accelerate the learning process and have been scientifically validated to improve learning and cognitive ability.

## Program Administration

### Administration of Program Information

*Authorities: 20 U.S.C. §§ 1412, 1413, 1418, 6398; 34 C.F.R. Part 300; Texas Education Code; Performance-Based Monitoring Analysis System (PBMAS)*

The LEA must comply with the Records guidelines.

### **Information for the TEA**

*34 CFR 300.211; 300.157; TEC 42.006; 20 US 1412(a)(15-16); 1413(a)(7); PBMAS*

The LEA must provide the TEA with information relating to the performance of children with disabilities participating in programs carried out under IDEA in order for TEA to carry out its duties.

### **Information Regarding Disproportionality**

*20 USC §1418(d)(1)(A-C)(2); 34 CFR 300.646(a)(1-3)(b)*

The LEA *will* comply with Child Find guidelines.

The LEA must comply with the Full and Individual Evaluation guidelines.

The LEA must comply with the ARD Committee guidelines.

The TEA provides for the collection and examination of data through PEIMS to determine if significant disproportionality based on race and ethnicity is occurring in the state and the LEAs of the state with respect to:

- The identification of children as children with disabilities in accordance with a particular impairment;
- The placement in particular educational settings of such children; and
- The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of such children, the state requires the LEA to publicly report on the revision of policies, practices, and procedures.

### **Information Regarding the Provision of a Free Appropriate Public Education**

*20 USC §1418(a)(1)(A)(i); 34 CFR 300.645(a); TEC 42.006*

The LEA *will* comply with the ARD Committee guidelines.

The LEA must provide data each year through PEIMS to the TEA who, in turn, reports to the Secretary of Education and the public the number and percentage of children with disabilities:

- By race, ethnicity, limited English proficiency status, gender, and disability category, who are in the following category:
  - Receiving a FAPE.

### **Information Regarding Least Restrictive Environment (LRE)**

*20 USC §1418(a); 34 CFR 300.645(a); TEC 42.006*

The EA must comply with the ARD Committee, including the Least Restrictive Environment guidelines.

The LEA must provide data each year through PEIMS to the TEA who, in turn, reports to the Secretary of Education and the public the number and percentage of children with disabilities:

- By race, ethnicity, limited English proficiency status, gender, and disability category, who are in each of the following separate categories:
  - Participating in regular education; and
  - In separate classes, separate schools or facilities, or public or private residential facilities.

### **Information Regarding Termination of Services**

*20 USC §1418(a)(1)(A); 34 CFR 300.645(a)*

The LEA must comply with the Full and Individual Evaluation guidelines.

The LEA must comply with the ARD Committee, including the Determination of Eligibility and Educational Need, and Graduation guidelines.

The LEA must provide data each year through PEIMS to the TEA who, in turn, reports to the Secretary of Education and the public the number and percentage of children with disabilities:

- By race, ethnicity, limited English proficiency status, gender, and disability category, who are in the following category:
  - For each year of age from age 14-21, stopped receiving special education and related services because of program completion (including graduation with a regular secondary school diploma), or other reasons, and the reasons why those children stopped receiving special education and related services.

### **Information Regarding Parentally-Placed Private School Children**

*20 USC §1412(a)(10)(A)(i)(V); 34 CFR 300.132(c)*

The LEA must comply with the Private Schools guidelines.

The LEA must maintain in its records and provide to the TEA the number of parentally-placed private school children evaluated, the number of parentally-placed private school children determined to be children with disabilities, and the number of parentally-placed private school children served.

### **Information Regarding Participation in State-or District-wide Assessments**

*20 USC §1412(a)(16); 34 CFR 300.160(f)*

The LEA must comply with the ARD Committee, including State- and District-wide Assessments guidelines.

The TEA (or, in the case of a district wide assessment, the LEA) must make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

- The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations in order to participate in those assessments;
- The number of children with disabilities participating in alternate assessments aligned to the state's content and achievement standards;
- The number of children with disabilities, if any, participating in alternate assessments based on modified academic achievement standards;
- The number of children with disabilities participating in alternate assessments aligned to alternate achievement standards (i.e., below enrolled grade level); and
- The performance of children with disabilities on regular assessments and on alternate assessments (if statistically reliable information does not reveal personally identifiable information about an individual child), compared with the achievement of all children, including children with disabilities, on those assessments.

### **Information Regarding Discipline**

*20 USC §1413(i), 1418(a)(1)(A,D,E); 34 CFR 300.229(b); 300.645(a), 19 Texas Administrative Code (TAC) §97.1021*

The LEA must comply with the Discipline guidelines.

The LEA must comply with the Restraint and Time-Out guidelines.

The LEA must provide data each year through PEIMS to the TEA who, in turn, reports to the Secretary of Education and the public the number and percentage of children with disabilities:

- By race, ethnicity, limited English proficiency status, gender, and disability category, who are in each of the following separate categories:
  - Removed to an interim alternative educational setting (IAES);
  - The acts or items causing removals to an IAES;
  - The number and percentage of children with disabilities who are subject to long-term suspensions or expulsions; and
  - The incidence and duration of disciplinary actions including suspensions of one day or more; and
- The number and percentage of children with disabilities who are removed to alternative educational settings or expelled compared to children without disabilities who are removed to alternative educational settings or expelled.

The state may require that an LEA include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit such statement to the same extent that such disciplinary information is included in, and transmitted with, the records of nondisabled children:

- The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child; and
- If the state adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any such statement of current or previous disciplinary action that has been taken against the child.

### **Information Regarding Migratory Children**

*20 USC §1413(a)(9), 6398(b)*

The LEA must cooperate in the Secretary's efforts under the Elementary and Secondary Education Act to ensure the linkage of records pertaining to migratory children with a disability for the purpose of electronically exchanging, among the states, health and educational information regarding such children.

### **Information on Direct Services by TEA**

*20 USC §1413(g); 34 CFR 300.227(a)(1)(i)*

The TEA will use the payments that would otherwise have been available to the LEA to provide special education and related services directly to children with disabilities residing in the area served by that LEA, if the TEA determines that the LEA has not provided the information needed to establish eligibility under IDEA.

## **Residential Placements**

*Authorities: Texas Education Code; 19 T.A.C. Chapter 89*

Subject to the provisions of the ARD Committee guidelines and this guideline, the LEA may contract with a residential facility to provide some or all of the special education services listed in the contracted child's IEP.

When making a residential placement, the LEA must:

- Comply with the ARD Committee, including the Least Restrictive Environment guidelines; and
- Make an initial and an annual on-site visit to verify that the residential facility can, and will provide the services listed in the child's IEP which the facility has agreed to provide to the child.

When a child who is residentially placed by the LEA changes residence to another Texas LEA, and the child continues in the contracted placement, the LEA which negotiated the contract must be responsible for the residential contract for the remainder of the school year.

The LEA may contract for an in-state residential placement of a child only with public or private residential facilities which maintain current and valid licensure for the particular disabling condition and age of the child.

An approved facility, institution, or agency with whom the LEA contracts must periodically report to the LEA on the services the child has received or will receive in accordance with the contract as well as diagnostic or other evaluative information that the LEA requires in order to fulfill its obligations under the IDEA.

## **Residential Application Process**

*TAC 89.61(a)(1-4); TEC 29.008(d)*

If the facility provides any educational services listed in the child's IEP, the facility's education program must be approved by the Commissioner of Education.

The LEA which intends to contract for residential placement of a child with a residential facility under this framework must notify the TEA of its intent to contract for the residential placement through the residential application process.

The LEA must comply with the Use of Funds for Contracted Services Including Residential Placements guidelines.

Requests for approval of state and federal funding for residentially placed children must be negotiated on an individual basis through a residential application submitted by the LEA to the TEA.

A residential application may be submitted for educational purposes only.

The residential application will not be approved if the application indicates that the:

- Placement is due primarily to the child's medical problems;
- Placement is due primarily to problems in the child's home;

- The LEA does not have a plan, including timelines and criteria, for the child's return to the local school program;
- The LEA did not attempt to implement lesser restrictive placements prior to residential placement (except in emergency situations as documented by the child's ARD committee);
- Placement is not cost-effective when compared with other alternative placements; and/or
- Residential facility provides unfundable/unapprovable services.

## **Residential Approval Process**

*TAC 89.61(a)(1-4)*

Residential facilities which provide educational services must have their educational programs approved for contracting purposes by the Commissioner of Education.

If the education program of a residential facility which is not approved by the commissioner of education is being considered for a residential placement by the LEA, the LEA should notify the TEA in writing of its intent to place a child at the facility.

The TEA will begin approval procedures and conduct an on-site visit to the facility within 30 calendar days after the TEA has been notified by the LEA.

Approval of the education program of a residential facility may be for one, two, or three years.

The Commissioner of Education will renew approvals and issue new approvals only for those facilities which have contract children already placed or which have a pending request for residential placement from the LEA.

The approval does not apply to residential facilities which only provide related services or residential facilities in which the accredited LEA where the facility is located provides the educational program.

## **Out of State Residential Placement**

*TAC 89.61(a)(c)*

The LEA may contract for an out-of-state residential placement in accordance with this framework.

The LEAs which contract for an out-of-state residential placement must do so in accordance with the rules for in-state residential placement in this framework, except that the facility must be approved by the appropriate agency in the state in which the facility is located, rather than by the Commissioner of Education in Texas.

## **Facilities**

*Authorities: 20 U.S.C. § 1404; 34 C.F.R. Part 300; Americans with Disabilities Accessibility Guidelines for Buildings and Facilities; Uniform Federal Accessibility Standards*

If the Secretary of Education determines that a program authorized under the IDEA Part B will be improved by permitting program funds to be used to acquire appropriate equipment, or to construct new facilities or alter existing facilities, the Secretary is authorized to allow the use of those funds for those purposes.

The LEA must comply with the Funding guidelines.  
The LEA must comply with the Administration of Equipment guidelines.

## **Compliance with Other Laws**

*34 CFR 300.718(b); 20 USC 1404(b)(1)(2); Standards for Accessible Design*

Any construction of new facilities or alteration of existing facilities with authorized IDEA program funds must comply with the requirements of:

- Appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the 'Americans with Disabilities Accessibility Guidelines for Buildings and Facilities'); or
- Appendix A of subpart 101-19.6 of title 41, Code of Federal Regulations (commonly known as the 'Uniform Federal Accessibility Standards, UFAS').

## **Administration of Equipment**

*Authorities: 20 U.S.C. §§ 1401, 1404, 1412; 34 C.F.R. Parts 80, 300; Texas Education Code; 19 T.A.C. Chapter 89*

"Assistive technology device" means any device, including equipment or a product system that is used to increase, maintain, or improve functional capabilities of the child with a disability.

The LEA must comply with the ARD Committee guidelines, including the Special Factors guidelines.  
The LEA must comply with the Facilities guidelines.

## **Definition**

*20 USC §1401(7)(A), 1401(7)(B); 34 CFR Part 300.14, 300.14(a), 300.14(b)*

The term "equipment" includes:

- Machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house such machinery, utilities, or equipment; and
- All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as:
  - Instructional equipment and necessary furniture;
  - Printed, published, and audio-visual instructional materials;
  - Telecommunications, sensory, and other technological aids and devices; and
  - Books, periodicals, documents, and other related materials.

## **Acquisition of Equipment**

*20 USC §1404(a); 34 CFR Part 300.105(a), 300.105(b), 300.718(a)*

The LEA must comply with the FUNDING guidelines when acquiring equipment and supplies.

The LEA must ensure that assistive technology devices (ATDs) are made available to the child with a disability if required as part of the child's special education, related services, or supplementary aids and services.

On a case-by-case basis, the use of school-purchased ATDs in the child's home or in other settings is required if the child's ARD committee determines that the child needs access to those devices in order to receive FAPE.

If the Secretary of Education determines that a program authorized under IDEA Part B will be improved by permitting program funds to be used to acquire appropriate equipment, the Secretary is authorized to allow the use of those funds for those purposes.

### **Equipment in Private Schools**

*34 CFR 300.138(c)(2); 300.144(a)(b)(c)(d); 20 USC 1412(a)(10)(A)(vii)*

The LEA must comply with the Private Schools and Proportionate Share Funding for Parentally-Placed Private Schools Child guidelines.

Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

The LEA must hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes in the IDEA Part B.

The LEA may place equipment and supplies in a private school for the period of time needed for the IDEA Part B program.

The LEA must ensure that the equipment and supplies placed in a private school:

- Are used only for IDEA Part B purposes; and
- Can be removed from the private school without remodeling the private school facility.

The LEA must remove equipment and supplies from a private school if:

- The equipment and supplies are no longer needed for IDEA Part B purposes; or
- Removal is necessary to avoid unauthorized use of equipment and supplies for other than IDEA Part B purposes.

### **Transfer of an Assistive Technology Device (ATD)**

*TEC 30.0015(a)(b)(1-3); TAC 89.1056(b); 34 CFR 80.32*

"Assistive technology device" means any device, including equipment or a product system that is used to increase, maintain, or improve functional capabilities of a child with a disability.

"Transfer" means the process by which an LEA that has purchased an ATD may sell, lease, or loan the device for the continuing use of a child with a disability changing the school of attendance in the district or leaving the district.

When a child with a disability using a device changes the school of attendance in the LEA or ceases to attend school in the LEA, the LEA may transfer an assistive technology device according to the requirements of this section.

An ATD may only be transferred to:

- The school or LEA in which the child or adult student enrolls;

- A state agency that provides services to the child or adult student following graduation from high school; or
- The child's parents or the child if the child has the legal capacity to enter into a contract.

A transfer must be in accordance with a transfer agreement which includes, specifically, the following:

- The transferor and transferee must represent and agree that the terms of the transfer are based on the fair market value of the ATD, determined in accordance with generally accepted accounting principles;
- The informed consent of the parent or adult student before transferring an ATD, in compliance with the Consent to Transfer Assistive Technology Devices guidelines.

If the transfer is a sale, then the sale of the ATD must be evidenced by a "Uniform Transfer Agreement" (UTA) which includes the following:

- The names of the transferor and the transferee;
- The date of the transfer;
- A description of the ATD being transferred;
- The terms of the transfer (including the transfer of warranties, to the extent applicable); and
- The signatures of authorized representatives of both the transferor and the transferee.

Nothing in this document:

- Alters any existing obligation under federal or state law to provide ATDs to children with disabilities;
- Requires an LEA to transfer an ATD to any person or entity;
- Limits an LEA's right to sell, lease, loan, or otherwise convey or dispose of property as authorized by federal or state laws, rules, or regulations; or
- Authorizes any transfer of an ATD that is inconsistent with any restriction on transferability imposed by the manufacturer or developer of the ATD or applicable federal or state laws, rules, or regulations.

## **Highly Qualified Special Education Teachers**

*Authorities: 20 U.S.C. §§ 1401, 34 C.F.R. Parts 200; 300; 19 T.A.C. Chapters 74, 89; Guidance for the Implementation of NCLB Highly Qualified Teacher Requirements Nov. 2011*

### **Rules of Construction**

Notwithstanding any other individual right of action that a parent or child may maintain under the IDEA, nothing in this framework must be construed to create a right of action on behalf of an individual child or class of children for the failure of a particular state educational agency or school district employee to be highly qualified.

### **Core Academic Subjects**

34 CFR 200.55(c); Guidance for NCLB Highly Qualified Teacher Requirements; TAC 74.72; 74.43; 74.74

Core academic subjects are English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

Arts include music (including band and choir), art, theatre, and dance and other courses accepted by the SBOE for graduation credit in fine arts.

Courses that are outside of the core academic subject areas (including career and technical education courses) that are accepted by SBOE for graduation credit in a core academic subject are considered core academic subject courses.

### **Highly Qualified Teachers**

34 CFR 200.55(a)(b); 300.17(g)(1) Guidance for NCLB Highly Qualified Teacher Requirements; All teachers in core academic subject areas must be highly qualified.

Courses that are outside of the core academic subject areas that are accepted by SBOE for graduation credit in a core academic subject will require a teacher who is highly qualified in the appropriate core curriculum area.

A special education teacher who is highly qualified under this framework will be considered highly qualified for purposes of the ESEA.

Title I, Part A teachers in core academic subject areas must be highly qualified when hired, including:

- A teacher in a targeted assisted school who is paid with funds under Title I, Part A;
- A teacher in a school wide program school; or
- A teacher employed by a school district with funds under Title I, Part A to provide services to eligible private school children.

### **Highly Qualified Requirements in General**

34 CFR 200.56(a-c); 300.18(b); *Guidance for Highly Qualified Teacher Requirements*; TAC 89.1131; 20 USC 1401(10)(B)(iii)

A teacher in an alternative certification program who is not yet fully certified may be considered to be highly qualified if the teacher meets the following requirements:

- Has obtained full state certification as a special education teacher (including alternative certification), or passed the state special education teacher licensing examination, and holds a license to teach in the state as a special education teacher;
- Has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
- Holds at least a bachelor's degree.

### **Highly Qualified by Alternative Certification**

34 CFR 300.18(b); *Guidance for Highly Qualified Teacher Requirements*;

A teacher in an alternative certification program who is not yet fully certified may be considered to be highly qualified if the teacher meets the following requirements:

- The teacher is participating in an approved SBOE certification alternative route to special education certification program under which the teacher:
  - Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;
  - Assumes functions as a teacher only for a specified period of time not to exceed three years;
  - Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;
  - Demonstrates satisfactory progress toward full certification as prescribed by the state; and
- Has at least a bachelor's degree; and
- Has demonstrated subject matter competency in each of the academic subjects the teacher is assigned to teach in a manner determined by the TEA to comply with the ESEA.

### **Separate High, Objective, Uniform State Standard of Evaluation (HOUSSE) for Special Education Teachers**

*34 CFR 300.18(e); Guidance for Highly Qualified Teacher Requirements;*

Provided that any adaptations of the state's HOUSSE would not establish a lower standard for the content knowledge requirements for special education teachers and meets all requirements for a HOUSSE for general education teachers:

- A state may develop a separate HOUSSE for special education teachers; and
- The separate HOUSSE for special education teachers may include single HOUSSE evaluations that cover multiple subjects.

### **Subject Matter Competency**

*34 CFR 200.56(b)(c); Guidance for Highly Qualified Teacher Requirements;*

New teachers at the public elementary school level must demonstrate subject matter competency by passing the appropriate elementary Examination for the Certification of Educators in Texas (ExCET) or Texas Examinations of Educator Standards (TExES) exam.

Experienced teachers at the public elementary school level must demonstrate subject matter competency by:

- Passing the appropriate elementary ExCET or TExES exam; or
- Meeting the HOUSSE requirements.

New teachers at the public middle and high school levels must demonstrate subject matter competency, in each of the core academic subjects they teach, by:

- Passing the subject-specific ExCET or TExES exam; or
- Successfully completing:
  - An undergraduate major;
  - A graduate degree;
  - Coursework equivalent to an undergraduate major; or
  - Advanced certification or credentialing.

Experienced teachers at the public middle and high school levels must demonstrate subject matter competency, in each of the core academic subjects they teach, by:

- Passing the subject-specific ExCET or TExES exam; and
- Successfully completing:
  - An undergraduate major;
  - A graduate degree;
  - Coursework equivalent to an undergraduate major; or
  - Advanced certification or credentialing; or
- Meeting the HOUSSE requirements.

### **Teachers in Non-Core Academic Subjects**

*34 CFR 300.18(b)(1-3)*

Any public elementary school or secondary school special education teacher teaching in a state, who is not teaching a core academic subject, is highly qualified if the teacher has met the requirements for special education teachers in general, or holds at least a bachelor's degree and has met the requirements under an alternative certification program.

### **Special Education Teachers Teaching in Multiple Subjects**

*34 CFR 300.18(d); 20 USC 1401(10)(D)(i)*

A special education teacher who teaches two or more core academic subjects exclusively to children with disabilities may demonstrate subject matter competency either:

- By meeting the applicable requirements for any elementary, middle, or high school teacher who is new or not new to the profession;
- In the case of a teacher who is not new to the profession, by demonstrating competence in all the core academic subjects in which the teacher teaches, which may include a single HOUSSE covering multiple subjects; or
- In the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, by demonstrating competence in the other core academic subjects, which may include a single HOUSSE covering multiple subjects, not later than two years after the date of employment.

A fully certified general education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.

### **Special Education Teachers Teaching to Alternative Achievement Standards**

*34 CFR 300.18(c); 20 USC 1401(10)(C)(i)*

When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards, highly qualified means the teacher, whether or not new to the profession, may either:

- Meet the applicable requirements for any elementary, middle, or secondary school teacher who is new or not new to the profession; or
- If providing instruction at the elementary level, meet the requirements as applied to an elementary school teacher; or

- If providing instruction above the elementary level, meet the requirements as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards, as determined by the TEA.

## **Private Charter Schools**

*34 CFR 200.56(a); 20 USC 1401(10)(B)(i)*

For any special education teacher teaching in a public charter school, highly qualified means that the teacher meets the certification or licensing requirements set forth by the state.

## **Private Schools**

*34 CFR 300.18(h)*

When the LEA special education teachers are used to provide proportionate share services to parentally-placed private school children, the LEA must comply with the highly qualified requirements in this framework and the requirements in the Proportionate Share and the Private Schools guidelines.

The requirements in this guideline do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by LEAs to provide proportionate share services to parentally-placed private school children with disabilities.

## **Rural Schools**

*Guidance for Highly Qualified Teacher Requirements*

Newly hired secondary teachers in eligible rural LEAs who teach two or more subjects and are highly qualified in at least one core academic subject area they teach have three years from the date of hire to become highly qualified in each core academic subject area they teach.

## **Reporting Requirements**

*Guidance for Highly Qualified Teacher Requirements*

Beginning with 2007-2008, the LEA must submit the Highly Qualified Teacher Compliance Report to the TEA electronically at the beginning of the school year.

The principal of each Title I, Part A campus must annually attest in writing whether the campus is in compliance with teacher and paraprofessional qualifications.

## **Special Education and Related Service Personnel**

*Authorities: 20 U.S.C. § 1412; 34 C.F.R. Part 300; Texas Education Code; 19 T.A.C. Chapter 89; Texas Occupations Code*

All special education and related service personnel must be certified, endorsed, or licensed in the areas of assignment, except:

- A person employed by a district prior to September 1, 2011, to perform marriage and family therapy is not required to hold a license as a marriage and family therapist to provide marriage and family therapy with that district.

## **Assignment**

*TAC 89.1131(b); TEC 29.304(a)*

A teacher who holds a special education certificate or an endorsement may be assigned to any level of basic special education instructional program serving children with disabilities ages 3 to 21, as permitted by certification, except:

- Persons assigned to provide speech therapy instructional services must hold a valid Texas Education Agency certificate in speech and hearing therapy or speech and language therapy, or a valid state license as a speech/language pathologist;
- Teachers holding only a special education endorsement for early childhood education for children with disabilities must be assigned only to programs serving infants through grade 6;
- Teachers certified in the education of children with visual impairments must be available to children with visual impairments, including deaf-blindness, through one of the LEA's instructional options, a shared services arrangement with other LEAs, or an education service center:
  - Teachers assigned full-time or part-time to instruct children from birth through age two with visual impairments, including deaf-blindness, must be certified in the education of children with visual impairments;
- Teachers certified in the education of children with auditory impairments must be available to children with auditory impairments, including deaf-blindness, through one of the LEA's instructional options, a regional day school program for the deaf, or a shared services arrangement with other LEAs:
  - Teachers assigned full-time or part-time to instruct children from birth through age two who are deaf, including deaf-blindness, must be certified in education of children who are deaf and severely hard of hearing;
- Teachers with secondary certification with the generic delivery system may be assigned to teach grades 6-12 only; and
- When the ARD committee has specified arrangements for physical education in the child's individualized education program, physical education may be provided by:
  - Special education instructional or related service personnel who have the necessary skills and knowledge;
  - Physical education teachers;
  - Occupational therapists;
  - Physical therapists; or
  - Occupational therapy assistants or physical therapy assistants working under supervision in accordance with the standards of their profession.

When physical education services are provided by special education personnel, the LEA must document that personnel have the necessary skills and knowledge, including, but not limited to, in-service records, evidence of attendance at seminars or workshops, or transcripts of college courses.

Orientation and mobility instruction must be provided by a certified orientation and mobility specialist who is certified by the Academy for Certification of Vision Rehabilitation and Education Professionals.

## **Paraprofessional Personnel**

*TAC 89.1131(c)*

Paraprofessional personnel must be certified.

Paraprofessional personnel may be assigned to work with:

- Eligible children with disabilities;
- General education and special education teachers; and
- Related service personnel.

Paraprofessional personnel may also be assigned to:

- Assist children with special education transportation;
- Serve as a job coach; or
- Serve in support of community-based instruction.

Paraprofessional personnel paid from state administrative funds may be assigned to:

- The Special Education Resource System;
- The Special Education Management System; or
- Other special education clerical or administrative duties.

## **Interpreters for the Deaf**

*TAC 89.1131(d); TEC 29.304(a)*

Interpreting services for children who are deaf must be provided by an interpreter who is certified in the appropriate language modes, if certification in such modes is available.

If certification is available, the interpreter must be a certified member of, or certified by, the Registry of Interpreters for the Deaf or the Texas Board for Evaluation of Interpreters, Department of Assistive and Rehabilitative Services, Office for Deaf and Hard of Hearing Services.

## **Records**

### **Confidentiality of Information**

*Authorities: 34 C.F.R. Parts 99, 300*

Under FERPA and for the purposes of the Records guidelines:

- "Educational agency or institution" means any public or private agency or institution;
- "Biometric record" means a record of one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual. Examples include fingerprints, retina and iris patterns, voiceprints, DNA sequence, facial characteristics, and handwriting;
- "Personally identifiable information" includes but is not limited to:
  - The student's name;
  - The name of the student's parent or other family member;
  - The address of the student or student's family;
  - A personal identifier, such as the student's social security number, student identification number, or biometric record;
  - Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;

- Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

## **Safeguards**

*34 CFR 300.623(a)(b)(c)*

Each educational agency or institution must:

- Protect the confidentiality of personally identifiable information at the collection, storage, disclosure, and destruction stages; and
- Maintain for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

One official at each educational agency or institution must assume responsibility for ensuring the confidentiality of any personally identifiable information.

All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures to protect the confidentiality of any personally identifiable information collected, used, or maintained by the educational agency or institution.

## **Special Education Eligibility Folder**

*Authorities: 20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. Part 300.320(d); 19 T.A.C. Chapter 89.1075(a);*

Each LEA must maintain an eligibility folder for each child receiving special education services, in addition to the child's cumulative record.

The eligibility folder must 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 IEP.

Nothing in the Individuals with Disabilities Act (IDEA) will be construed to require that additional information be included in a student's IEP beyond what is explicitly required in the ARD Committee portion of this document.

## **Retention and Destruction of Records**

*Authorities: 34 C.F.R. §§ Parts 75, 80, 300; 19 T.A.C. Chapter 101; Texas Government Code; Texas Local Government Code; Texas State Library and Archives Commission Local Schedule*

The director and librarian, under the direction of the Texas State Library and Archives Commission, prepares and distributes records retention schedules for each type of local government, including a schedule for records common to all types of local government.

Each records retention schedule must:

- List the various types of records of the applicable local government;
- State the retention period prescribed by a federal or state law, rule of court, or regulation for records for which a period is prescribed; and
- Prescribe retention periods for all other records.

Prescribed retention periods have the same effect as if prescribed by law after the records retention schedule is adopted as a rule of the Texas State Library and Archives Commission.

## **Definitions**

The term "director and librarian" means the executive and administrative officer of the Texas State Library and Archives Commission, respectively.

The term "local government" means a county, including all district and precinct offices of a county, municipality, public school district, appraisal district, or any other special-purpose district or authority.

The term "local government record" means any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by a local government or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business.

A local government record does not include:

- Extra identical copies of documents created only for convenience of reference or research by officers or employees of the local government;
- Notes, journals, diaries, and similar documents created by an officer or employee of the local government for the officer's or employee's personal convenience;
- Blank forms;
- Stocks of publications;
- Library and museum materials acquired solely for the purposes of reference or display;
- Copies of documents in any media furnished to members of the public to which they are entitled under the Public Information Act (PIA) or other state law; or
- Any records, correspondence, notes, memoranda, or documents, other than a final written agreement associated with a matter conducted under an alternative dispute resolution procedure in which personnel of a state department or institution, local government, special district, or other political subdivision of the state participated as a party, facilitated as an impartial third party, or facilitated as the administrator of a dispute resolution system or organization.

The term "records retention schedule" means a document issued by the Texas State Library and Archives Commission under authority of the subchapter on the Preservation and Management of Local Government Records in the Texas Government Code, establishing mandatory retention periods for local government records.

The term "retention period" means the minimum time that must pass after the creation, recording, or receipt of a record, or the fulfillment of certain actions associated with a record, before it is eligible for destruction.

### **Use of Local Schedule SD**

Local Schedule SD sets mandatory minimum retention periods for records commonly found in LEA's, and is for the use of:

- LEAs of all types;
- Regional educational service centers;
- Educational cooperatives for special education or other purposes;
- Rehabilitation districts;
- County industrial training school districts;
- County vocational districts; and
- Active offices of county superintendents of schools and county departments of education.

### **LEAs Governed by State Agencies or State Boards**

The State and Local Records Management Division of the Texas State Library and Archives Commission determines the extent to which the following LEAs governed by state boards use Local Schedule SD:

- Texas School for the Blind and Visually Impaired;
- Texas School for the Deaf;
- University of North Texas Academy of Mathematics and Science; and
- Any schools governed by state agencies such as the Texas Juvenile Justice Department, known formerly as the Texas Youth Commission, the Department of Aging and Disability Services, etc.

### **Local Schedule SD Abbreviations**

Abbreviations used in Local Schedule SD include:

- AV - As long as administratively valuable;
- CE - Calendar year end;
- CFR - Code of Federal Regulations;
- FE - Fiscal year end;
- TAC - Texas Administrative Code;
- US - Until Superseded; and
- LA - Life of Asset.

### **Retention Period**

Unless otherwise stated, the retention period for a record:

- Is in calendar years from the date of the record's creation; and

- Applies only to an official record and not to convenience or working copies created for informational purposes.

Certain records are assigned the retention period of AV, and this retention period affords local governments the maximum amount of discretion in determining a specific retention period for a record.

### **Multiple Copies and the Official Record**

Where several copies are maintained, each local government should decide:

- Which copy will be the official record; and
- In which of its divisions or departments it will be maintained.

Local government records management programs should establish policies and procedures to provide for the systematic disposal of copies.

### **Multiple Records Maintained Together**

For a record maintained in a bound volume with pages not designed for removal, the retention period dates from the date of last entry, unless otherwise stated.

If two or more records are maintained together and are not severable, the combined record must be retained for the length of time of the component with the longest retention period.

### **Electronically Stored Data**

The retention period for a record applies to the record regardless of the medium in which it is maintained.

Electronically stored data that is used to create in any manner a record or the functional equivalent of a record, as described in Local Schedule SD, must be retained, along with the hardware and software necessary to access the data, for the retention period assigned to the record, unless the backup copies of the data generated from electronic storage are retained in paper or on microfilm for the retention period.

### **Other Local Schedules**

Local Schedule SD should be used in conjunction with Local Schedule GR (Records Common to All Governments) and Local Schedule TX (Records of Property Taxation).

Local Schedule SD should be used in conjunction with Local Schedule GR (Records Common to All Governments) and Local Schedule TX (Records of Property Taxation).

In any instances of conflict between retention periods among Local Schedule SD, Local Schedule GR, or Local Schedule TX, the retention periods in Local Schedule SD take priority

### **Grant Records**

LEAs maintain many records includable among the general administrative, financial, and personnel record series in Local Schedule GR, especially those relating to:

- Grant allocations
- Funding; and
- Reporting.

### **Retention of Federal Financial and Program Records**

The five-year retention period frequently established for records of school districts in Local Schedules SD and GR derives from federal requirements governing the retention of financial and programmatic records, including:

- Supporting documents, statistical reports, and other records pertinent to program regulations or the grant agreement relating to projects or programs funded by the Department of Education through sub grants using federal funds from the TEA.

Federal regulations require that all records of the types mentioned must be available for audit for three years after the date of submission of the single or last expenditure report by the TEA as sub grantor, not by the school district. Because final expenditure reports are submitted by the TEA after all reports from districts are received, a five-year retention period for many records of school districts is necessary to satisfy this requirement adequately.

If an audit is pending in which an expenditure or the eligibility of the child to participate in a federal program is questioned, then all records affecting the outcome of the audit must be retained until the audit is settled.

Copies of reports or records submitted to the TEA will be retained by school districts in accordance with Local Schedule SD.

### **Retention: Local Schedule SD**

The LEA must comply with the applicable parts and sections of Local Schedule SD when determining retention rate of records, such as:

- Academic records;
- FERPA records;
- Records of special populations and services including:
  - Special education program records;
  - Bilingual and special language program records;
  - Gifted/Talented program records;
  - Section 504 program records;
  - Dyslexia program records;
  - Migrant Student Record Transfer System records; or
  - Other special populations records;
- Attendance records;
- Health records;
- Instruction and grade reporting records;
- Discipline and counseling records;

- Adult and vocational education records;
- Drivers Education records;
- Accreditation records;
- Food service records;
- Textbook records;
- Transportation records;
- School safety records;
- Financial records;
- Personnel and staffing records including:
  - Individual employee records; and
  - Staffing records;
- Miscellaneous reports and surveys;
- Miscellaneous records; and
- Library records.

### **Retention of Test Administration Documentation**

As part of test administration procedures, the LEA must maintain records related to the security of assessment instruments for a minimum of five years.

### **Requirement to Retain**

A local government record must not be destroyed if:

- The subject matter of the record is known by the custodian to be in litigation;
- There is a pending request for disclosure under the PIA;
- There is an outstanding request to inspect and review the record under FERPA, (see the Parent or Eligible Student Access to Education Records guidelines);
- The record is subject to a pending audit by a federal or state grantor or sub grantor agency or, if questions remain unresolved from a conducted audit until audit finds are resolved; or
- There is a pending claim, administrative review, or other action involving the record.

### **Destruction**

Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

A local government record may be destroyed if:

- The record is listed on a records control schedule accepted by the director and librarian and its retention period has expired or it has been microfilmed or stored electronically;
- The record appears on a list of obsolete records approved by the director and librarian;
- A destruction request is filled with and approved by the director and librarian for a record not listed on an approved control schedule;
- An expunction order issued by a district court pursuant to state law directs the destruction of the record; or
- The record is defined or listed as exempt from scheduling or filing requirements by Texas State Library and Archives Commission rules.

Subject to any policies developed in each local government or elective county office regarding destruction, the custodian or the creator of the document may exercise discretion in disposing of material that is not included in the definition of a local government record and that is not described as:

- Extra identical copies of documents created only for convenience of reference or research by officers or employees of the local government;
- Notes, journals, diaries, and similar documents created by an officer or employee of the local government for the officer's or employee's personal convenience; and
- Blank forms.

### **Method of Destruction**

Local government records, including extra identical copies, to which public access is restricted under the [PIA](#), or other state law, may be destroyed only by:

- Burning;
- Pulping; or
- Shredding.

A local government record, to which access is not restricted under the [PIA](#), or other state law may be destroyed only by:

- Burning;
- Pulping;
- Shredding;
- Burial in a landfill; or
- Sale or donation for recycling purposes.

A local government that sells or donates records for recycling purposes must establish procedures for ensuring that the records are rendered unrecognizable as local government records by the recycler.

Local governments in their records management programs should establish policies and procedures to provide for the systematic disposal of copies.

The director and librarian may approve other methods of destruction that render the records unrecognizable as local government records.

### **Damaged Records**

A record whose minimum retention period has not yet expired and is less than permanent may be disposed of if:

- It has been so badly damaged by fire, water, or insect or rodent infestation as to render it unreadable; or
- Portions of the information in the record have been so thoroughly destroyed that remaining portions are unintelligible.

If the retention period for the record is permanent, authority to dispose of the damaged record must be obtained from the director and librarian, and the Request for Authority to Destroy Unscheduled Records (Form SLR 501) should be used for this purpose.

### **Alienation of Records**

A records management officer or custodian may temporarily transfer a local government record to a person for the purposes of:

- Microfilming;
- Duplication;
- Conversion to electronic media;
- Restoration; or
- Similar records management and preservation procedures.

### **Liability and Penalty**

A custodian of local government records, records management officer, or other officer or employee of a local government may not be held personally liable for the destruction of a local government record if the destruction is in compliance with the Local Government Code and rules adopted under it.

An officer or employee of a local government commits a Class A misdemeanor if the officer or employee knowingly or intentionally violates the Local Government Code or rules adopted under it by:

- Destroying or alienating a local government record in violation of the Local Government Code; or
- Intentionally failing to deliver records to a successor in office.

### **Record of Access**

*Authorities: 34 C.F.R. Parts 99 and 300; Texas Family Code*

An educational agency or institution must maintain a record of each request for access to and each disclosure of personally identifiable information from the education records, as defined in the Parent or Eligible Student Access to Education Records guidelines, of each student.

A record of access for disclosure of personally identifiable information to a juvenile service provider as permitted by the When Consent is Not Required to Disclose Information guidelines, must be maintained for seven years from the date of disclosure.

For each request or disclosure, the record of access must include:

- The name of the party who requested or received personally identifiable information from the education records;
- The legitimate interests the party had in requesting or obtaining the information--the purpose for which the party is authorized to use the records;
- The date access was given; and

- If an educational agency or institution discloses personally identifiable information from an education record with the understanding authorized under the Re-disclosure of Information guidelines, the record of access must include:
  - The names of the additional parties to which the receiving party may disclose the information on behalf of the educational agency or institution; and
  - The legitimate interests, as provided in the When Consent is Not Required to Disclose Information guidelines, which each of the additional parties has in requesting or obtaining the information.

The following parties requesting or obtaining access do not have to be entered on the record of access:

- The parent or eligible student;
- A school official whom the agency or institution has determined to have a legitimate educational interest;
- A party with written consent from the parent or eligible student;
- A party seeking directory information; or
- A party seeking or receiving the records as directed by a federal grand jury or other law enforcement subpoena and the issuing court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

The record of access may be inspected by the following parties:

- The parent or eligible student;
- The school official or his or her assistants who are responsible for the custody of the records; and
- For the purposes of auditing the recordkeeping procedures of the educational agency or institution:
  - School officials, including teachers within the agency or institution whom the agency or institution has determined to have legitimate educational interests; and
  - Authorized representatives of the comptroller general of the United States, the attorney general of the United States, the United States secretary of education, or state and local educational authorities.

## **Annual Notification**

*Authorities: 34 C.F.R. Part 99*

Under FERPA and for the purposes of the administration of Records:

- "Parent" means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian;
- "Eligible student" means a student who has reached 18 years of age or is attending an institution of postsecondary education; and
- "Student," except as otherwise specifically provided in FERPA and the administration of Records section, means any individual who is or has been in attendance at an educational

agency or institution and regarding whom the agency or institution maintains education records.

Each educational agency or institution shall annually notify parents of students currently in attendance, or eligible students currently in attendance, of their rights under FERPA.

The annual notification must inform parents or eligible students that they have the right to:

- Inspect and review the student's education records;
- Seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;
- Consent to disclosures of personally identifiable information contained in the student's education records as provided in Consent for Disclosure of Confidential Information, except When Consent is not Required to Disclose Information; and
- File with the Family Policy Compliance Office a complaint concerning alleged failures by the educational agency or institution to comply with the requirements of FERPA.

The notice must include all of the following:

- The procedure for exercising the Parent or Eligible Student Access to Education Records;
- The Procedures for Amending Education Records; and
- A specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest, if the educational agency or institution has a policy of disclosing education records without parental consent to school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

An educational agency or institution must effectively provide annual notification to parents or eligible students who are disabled.

An agency or institution of elementary or secondary education must effectively provide annual notification to parents who have a primary or home language other than English.

An educational agency or institution may provide annual notification by any means that are reasonably likely to inform the parents or eligible students of their rights.

## **Parent or Eligible Student Access to Education Records**

*Authorities: 20 U.S.C. § 1415; 34 C.F.R. Parts 99, 300; Texas Education Code*

Parents of a student with a disability must be afforded an opportunity to examine all records relating to the student as described in the Notice of Procedural Safeguards guidelines.

### **Definitions**

Under FERPA and for the purposes of the administration of records:

- "Eligible student" means a student who has reached 18 years of age or is attending an institution of postsecondary education;

- A "record" is any information recorded in any way, including but not limited to hand writing, print, computer media, video or audio tape, film, microfilm and microfiche.
- The term "education records" means those records that are:
  - Directly related to a student; and
  - Maintained by an educational agency or institution or by a party acting for the agency or institution.

Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records.

The term "education records" does not include:

- Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;
- Records of the law enforcement unit of an educational agency or institution;
- Records relating to an individual who is employed by an educational agency or institution that:
  - Are made and maintained in the normal course of business;
  - Relate exclusively to the individual in that individual's capacity as an employee; and
  - Are not available for use for any other purpose;
- Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are:
  - Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;
  - Made, maintained, or used only in connection with treatment of the student; and
  - Disclosed only to individuals providing the treatment which does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and
- Records that only contain information about an individual after he or she is no longer a student at that agency or institution.
- Grades or peer-graded papers before they are collected and recorded by a teacher.

## **List of Types and Location of Information**

*34 CFR 300.616*

Each LEA must provide parents or eligible students on request a list of the types and locations of education records collected, maintained, or used by the LEA.

## **Student Assessment Data Portal**

*TEC 32.358(a-d)*

The TEA will establish and maintain a student assessment data portal for use by LEAs, teachers, parents, students, and public institutions of higher education.

The TEA will establish a secure, interoperable system to be implemented through the portal under which:

- A student, the student's parent, or other person standing in parental relationship can easily access the student's individual assessment data;
- An authorized employee of the LEA, including the LEA teacher, can readily access individual assessment data of LEA students for use in developing strategies for improving student performance; and
- An authorized employee of a public institution of higher education can readily access individual assessment data of students applying for admission for use in developing strategies for improving student performance.

The secure, interoperable system will provide a means for a student, the student's parent, or other person standing in parental relationship to track the student's progress on assessment instrument requirements for graduation.

The TEA will establish an interoperable system to be implemented through the portal under which general student assessment data is easily accessible to the public.

Student assessment data provided through the portal will:

- Be available on or before the first instructional day of the school year following the year in which the data is collected; and
- Include student performance data on assessment instruments over multiple years, beginning with the 2007-2008 school year, including any data indicating progress in student achievement.

### **Right to Inspect and Review Records**

*34 CFR 300.613(a)(b)(c); 34 CFR 99.3, 99.4, 9.10; TEC 26.004(1-10)*

An educational agency or institution must give full rights to either parent to inspect and review records relating to his or her child unless the agency or institution has been provided with evidence that there is a court order, state statute, or legally binding document relating to such matters as guardianship, divorce, separation, or custody that specifically revokes these rights.

A parent or eligible student has the right to inspect and review any education records of the student that are collected, maintained, or used by the educational agency or institution, including:

- Attendance records;
- Test scores;
- Grades;
- Disciplinary records;
- Counseling records;
- Psychological records;
- Applications for admission;
- Health and immunization information;
- Teacher and counselor evaluations; and
- Reports of behavioral patterns.

The right to inspect and review education records includes:

- The right to a response from the educational agency or institution to reasonable requests for explanations and interpretations of records;
- The right to request that the educational agency or institution provide copies of the records in compliance with Copies Including Fees for Copies;
- The right to have the educational agency or institution preserve any education records for which an outstanding request to inspect and review exists;
- The right to have the treatment records of the student reviewed by a physician or other appropriate professional of the parent or eligible student's choice; and
- The right to have a representative of the parent or eligible student inspect and review the records.

## **Timeline**

*34 CFR 300.613(a)(b)(c); 34 CFR 99.10(b)*

The educational agency or institution must comply with a request to inspect and review any education records relating to the student:

- Without unnecessary delay and within a reasonable period of time;
- Before any ARD committee meeting;
- Before a resolution session;
- Before any due process hearing;
- Not more than 45 days after the request is received.

## **Records on More than One Student**

*34 CFR 300.615; 34 CFR 99.10(a)*

If the education records of a student include information on more than one student, the parent or eligible student may inspect and review or be informed of only the specific information about that student.

## **Copies Including Fees for Copies**

*34 CFR 300.617; 34 CFR 99.10(d)*

If circumstances effectively prevent the parent or eligible student from exercising the right to inspect and review the student's education records, the educational agency or institution must:

- Provide the parent or eligible student with a copy of the records requested; or
- Make other arrangements for the parent or eligible student to inspect and review the requested records.

An educational agency or institution may charge a reasonable fee for a copy of an education record which is made for the parent or eligible student, unless the imposition of a fee effectively prevents exercising the right to inspect and review the student's education records.

An educational agency or institution must not charge a fee to search for or to retrieve the education records of a student.

When a disclosure of confidential records is made pursuant to the Consent for Disclosure of Confidential Information guidelines:

- If a parent or eligible student so requests, the educational agency or institution must provide a copy of the records disclosed; and
- If the parent of a student who is not an eligible student as defined in the Annual Notification guidelines so requests, the agency or institution must provide the student with a copy of the records disclosed.

When a disclosure of confidential information is made pursuant to the When Consent is Not Required to Disclose Information guidelines, specifically under the conditions that apply to disclosure of information to other educational agencies or institutions, the educational agency or institution must give the parent or eligible student, upon request, a copy of the record that was disclosed.

## **Procedures for Amending Education Records**

*Authorities: 34 C.F.R. Parts 99 and 300*

### **Request to Amend**

*34 CFR 300.618; 34 CFR 99.21(c)*

A parent or eligible student may request the educational agency or institution to amend the student's education record if the parent or eligible student believes the education records relating to the student contain information that is:

- Inaccurate;
- Misleading; or
- In violation of the student's rights of privacy.

Within a reasonable period of time after the agency or institution receives the request, the educational agency or institution must decide whether to amend the record as requested.

If the educational agency or institution decides not to amend the record as requested, it must:

- Inform the parent or eligible student of its decision; and
- Advise the parent or eligible student of the right to a records hearing.

### **Opportunity for a Records Hearing**

*34 CFR 300.619; 34 CFR 99.21(a)*

An educational agency or institution must give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the education records is:

- Inaccurate;
- Misleading; or
- Otherwise in violation of the privacy or other rights of the student.

### **Hearing Procedures**

*34 CFR 99.22(a)(b)(c)*

The records hearing must meet, at a minimum, the following requirements:

- Must be held within a reasonable time after the request for the hearing from the parent or eligible student has been received;

- The educational agency or institution must give the parent or eligible student the following notice of the hearing:
  - Date;
  - Time; and
  - Place;
- The notice must be provided a reasonable amount of time prior to the hearing;
- The hearing may be conducted by any individual, including an official of the educational agency or institution, who does not have direct interest in the outcome of the hearing;
- The parent or eligible student must be given a full and fair opportunity to present evidence relevant to the issues:
  - The parent or eligible student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney; and
- Within a reasonable period of time, the educational agency or institution must make its decision in writing based solely on the evidence presented at the hearing, and must include:
  - A summary of the evidence; and
  - The reasons for the decision.

## Results of Records Hearing

*34 CFR 99.21(b)*

If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, it must:

- Amend the record accordingly; and
- Inform the parent or eligible student of the amendment in writing.

If, as a result of the hearing, the educational agency or institution decides that the information in the education record is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it must inform the parent or eligible student of the right to place a statement in the record:

- Commenting on the contested information in the record;
- Setting forth the reasons for disagreeing with the decision of the agency or institution; or
- Both.

Any statement placed in the records of the student must:

- Be maintained as part of the records of the student for as long as the record is maintained by the agency; and
- Disclosed whenever it discloses the portion of the record to which the statement relates.

## When Consent is Not Required to Disclose Information

*Authorities: 26 U.S.C. § 152; 34 C.F.R. Parts 99, 300; Texas Education Code; 19 T.A.C. Chapter 89; Texas Family Code 99.31(b), 99.34, 99.35, 99.36(a), 99.36(b)(2), 99.36(b)(3), 99.36(c), 300.622(b)(1), 300.622(a), 19 TAC §89.1075(c)*

Consent for disclosure of confidential information is not required before personally identifiable information is released if:

- The disclosure is to officials of IDEA Part B participating agencies for purposes of meeting a requirement of IDEA Part B except as otherwise provided in this framework;
- The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests,
- The disclosure is to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, is enrolled or is receiving services, subject to the Conditions that Apply to Disclosure of Information to Other Educational Agencies or Institutions;
- The disclosure is to authorized representatives listed in the Conditions that Apply to Disclosure of Information for Federal or State Program Purposes guidelines;
- The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to:
  - Determine eligibility for the aid;
  - Determine the amount of the aid;
  - Determine the conditions for the aid; or
  - Enforce the terms and conditions of the aid;
- Unless further limited by state law, the disclosure is to state and local officials or authorities to whom this information is specifically:
  - Allowed to be reported or disclosed pursuant to a state statute adopted before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and the system's ability to effectively serve the student whose records are released; or
  - Allowed to be reported or disclosed pursuant to Conditions that Apply to Disclosure of Information as Permitted by State Statute After November 19, 1974 Concerning the Juvenile Justice System;
- The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions subject to the Conditions that Apply to Disclosure of Information to Organizations Conducting Studies;
- The disclosure is to accrediting organizations to carry out their accrediting functions;
- The disclosure is to the parent of a dependent student, as defined in the Internal Revenue Code;
- The disclosure is to comply with a judicial order or lawfully issued subpoena subject to the Conditions that Apply to a Judicial Order or Lawfully Issued Subpoena;
- The disclosure is to appropriate parties in connection with a health or safety emergency under the Conditions that Apply to Disclosure of Information in Health and Safety Emergencies.
- The disclosure is information the educational agency or institution has designated as "directory information," in compliance with the Disclosure of Directory Information guidelines; and
- The disclosure is to the parent of a student who is not an eligible student or to the student.

## **Conditions that Apply to Disclosure of Information to Other Educational Agencies or Institutions**

*34 CFR 99.34(a)(b)*

An educational agency or institution that discloses an education record to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, is enrolled, or is receiving services, must:

- Make a reasonable attempt to notify the parent or eligible student at the last known address of the parent or eligible student, unless:
  - The disclosure is initiated by the parent or eligible student; or
  - The annual notification of the agency or institution includes a notice that the agency or institution forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll or transfer;
- Give the parent or eligible student, upon request, a copy of the record that was disclosed; and
- Give the parent or eligible student, upon request, an opportunity for a hearing under the Procedures for Amending Education Records guidelines.

### **Conditions that Apply to Disclosure of Information for Federal or State Program Purposes**

*34 CFR 99.31(a); 99.35(b)(c)*

The following officials may have access to education records in connection with an audit or evaluation of federal- or state- supported education programs, or for the enforcement of or compliance with Federal legal requirements which relate to those programs:

- The Comptroller General of the United States;
- The Attorney General of the United States;
- The United States Secretary of Education; or
- State and local educational authorities.

Unless there has been consent for disclosure of confidential information or the collection of personally identifiable information is specifically authorized by federal law, the information that is collected for disclosure for federal or state program purposes must:

- Be protected in a manner that does not permit personal identification of individuals by anyone except the Comptroller General of the United States, the Attorney General of the United States, the United States Secretary of Education, or state and local educational authorities; and
- Be destroyed when no longer needed for the purpose of audit or evaluation of federal or state supported education programs, or for the enforcement of or compliance with federal legal requirements which relate to those programs.

### **Conditions that Apply to Disclosure of Information Concerning the Juvenile Justice System**

*34 CFR 99.31(a); 99.38(a); Texas Family Code 58.0051; TEC 27.084(a)(c)(e)(h)*

If reporting or disclosure allowed by state statute concerns the juvenile justice system and the system's ability to effectively service, prior to adjudication, the student whose records are released, an educational agency or institution may disclose education records.

At the request of a juvenile service provider, a local educational agency must disclose to the juvenile service provider confidential information contained in the student's educational records if the student has been:

- Taken into custody by a law-enforcement officer or probation officer in connection with a proceeding in juvenile or family court; or
- Referred to a juvenile court for allegedly engaging in delinquent conduct or conduct indicating a need for supervision.

The officials and authorities to whom the records are disclosed must certify in writing to the educational agency or institution that the information will not be disclosed to any other party, except as provided under state law, without the prior written consent of the parent of the student.

Unless the parent or the eligible student has given written consent for disclosure of confidential information, a Record of Access for information disclosed to a juvenile justice provider must be maintained for seven years from the date the information is disclosed.

For records provided to a juvenile service provider, a fee equal to the fee charged under the Public Information Act may be charged unless:

- A memorandum of understanding between the requesting provider and the disclosing provider prohibits the payment of a fee, provides for a waiver of a fee, or provides an alternate method of assessing a fee.

## **Conditions that Apply to Disclosure of Information to Organizations Conducting Studies**

*34 CFR 99.31(a)(6)(i)(ii)*

Under FERPA and for the purposes of the administration of Records, the term "organization" includes, but is not limited to, federal, state, and local agencies, and independent organizations: Information may be disclosed to organizations conducting studies for, or on behalf of, educational agencies or institutions to:

- Develop, validate, or administer predictive tests;
- Administer student aid programs; or
- Improve instruction.

The agency or institution may disclose personally identifiable information to organizations conducting studies, and a state or local educational authority or agency headed by the comptroller general of the United States, the attorney general of the United States, the secretary of education, or state and local educational authorities may re-disclose personally identifiable information only if:

- The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and
- The information is destroyed when no longer needed for the purposes for which the study was conducted; and
- It enters into a written agreement with the organization that:
  - Specifies the purpose, scope, and duration of the study or studies and the information to be disclosed;

- Requires the organization to use personally identifiable information from education records only to meet the purpose or purposes of the study as stated in the written agreement;
- Requires the organization to conduct the study in a manner that does not permit personal identification of parents and students, as defined in the part, by anyone other than representatives of the organization with legitimate interests; or
- Requires the organization to destroy all personally identifiable information when the information is no longer needed for the purposes for which the study was conducted and specifies the time period in which the information must be destroyed.

### **Conditions that Apply to Judicial Order or Lawful Issued Subpoena**

*34 CFR 99.31(a)(9)(ii)(iii)*

The educational agency or institution may disclose information to comply with a judicial order or lawfully issued subpoena only if the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action, unless the disclosure is in compliance with:

- A federal grand jury subpoena and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed; or
- Any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

If an educational agency or institution initiates legal action against a parent or student, the educational agency or institution may disclose to the court, without a court order or subpoena, the education records of the student that are relevant for the educational agency or institution to proceed with the legal action as plaintiff.

If a parent or eligible student initiates legal action against an educational agency or institution, the educational agency or institution may disclose to the court, without a court order or subpoena, the student's education records that are relevant for the educational agency or institution to defend itself.

### **Conditions that Apply to Disclosure of Information in Health and Safety Emergencies**

*34 CFR 99.36(a)*

An educational agency or institution may disclose personally identifiable information from an education record to appropriate parties, including parents or an eligible student, in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

Nothing shall prevent an educational agency or institution from:

- Including in the education records of a student appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community;
- Disclosing appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of

that student, other students, or other members of the school community, to teachers and school officials within the agency or institution who the agency or institution has determined have legitimate educational interests in the behavior of the student; or

- Disclosing appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community, to teachers and school officials in other schools who have been determined to have legitimate educational interests in the behavior of the student.

In making a determination regarding disclosing information in health and safety emergencies, an educational agency or institution may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals.

If the educational agency or institution determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals.

If, based on the information available at the time of the determination of a health or safety emergency, there is a rational basis for the determination, the United States Department of Education will not substitute its judgment for that of the educational agency or institution in evaluating the circumstances and making its determination.

## **Redisclosure of Information**

*Authorities: 26 U.S.C. § 152; 34 C.F.R. Part 99*

### **Sender Responsibilities**

*34 CFR 99.31(a)(9)(11); 99.33(c)*

An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent or eligible student, except that:

- The conditional re-disclosure requirements do not apply to disclosures made:
  - Pursuant to court orders, lawfully issued subpoenas, or litigation as otherwise defined in the When Consent is Not Required to Disclose Information guidelines;
  - In compliance with the Disclosure of Directory Information guidelines; or
  - To the parent of a student who is not an eligible student or to the student.

An educational agency or institution must inform a party to whom disclosure is made of the requirements of re-disclosure of information, except when the disclosure is pursuant to When Consent is Not Required to Disclose Information.

### **Recipient Responsibilities**

*34 CFR 99.33(a)(b)*

The officers, employees, and agents of a party that receives education records from an educational agency or institution must use the information only for the purposes for which the disclosure was made, except that:

- The party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if:
  - The disclosures meet the requirements of When Consent is not Required to Disclose Information guidelines; and
  - The educational agency or institution has complied with the requirements of the Record of Access guidelines.

## **Public Information**

*Authorities: 20 U.S.C. § 1413(a)(8); 34 C.F.R. Part 3002.12; Texas Government Code*

Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle that government is the servant and not the master of the people, it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. The provisions of this chapter shall be liberally construed to implement this policy.

Under the Public Information Act and this framework, the term "governmental body" encompasses all public entities in the executive and legislative branches of government at the state and local levels.

Under the PIA and this framework, "public information" means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- By a governmental body; or
- For a governmental body and the governmental body owns the information or has a right of access to it.

The media on which public information is recorded include:

- Paper;
- Film;
- A magnetic, optical, or solid state device that can store an electronic signal;
- Tape;
- Mylar;
- Linen;
- Silk; and
- Vellum.

The general forms in which the media containing public information exist include a book, paper, letter, document, printout, photograph, film, tape, microfiche, microfilm, photostat, sound recording, map, drawing, and a voice, data, or video representation held in computer memory.

To ensure that all requests and responses made under the PIA comply with the law, the requestor and responding entity should follow the 2016 Public Information Act Handbook.

The local educational agency (LEA) must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the agency or institution under the Individuals with Disabilities Education Act (IDEA).

### **ADMINISTRATIVE APPROVAL**

Signature of Board President: Marcel Valdez

Date Approved: 10/25/2016

Signature of LPISD Superintendent: Matthew McHazlett

Date Approved: 10/25/2016

Date Updated Review: \_\_\_\_\_ Revised: \_\_\_\_\_