MANOR INDEPENDENT SCHOOL DISTRICT
SPECIAL EDUCATION OPERATING PROCEDURES:
LEAST RESTRICTIVE ENVIRONMENT

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

How does a student's ARD committee make a placement decision? [1]

To the maximum extent appropriate, students with disabilities must be educated with students who are nondisabled, and special classes, separate schooling, or other removal of students with disabilities from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes, with the use of supplementary aids and services, cannot be achieved satisfactorily.[2] Once a student's IEP is fully developed, the Campus ARD Administrator shall ensure that the student's ARD committee considers, and the student's IEP documents, a placement determination based upon the individual needs of the particular student and the appropriate and least restrictive educational environment in which the IEP can be implemented. When making a placement decision, the Campus ARD Administrator shall ensure that the ARD committee considers a continuum of alternative placements.

[1] *A.B. v. Clear Creek ISD*, 75 IDELR, 787 F.App'x 217 (5th Cir. 2019); *Daniel RR v. State Bd. of Ed.*, 874 F.2d 1036 (5th Cir. 1989); *J.H. v. Fort Bend Indep. Sch. Dist.*, 482 Fed. Appx. 915 (5th Cir. 2012)
[2] 34 C.F.R. § 300.114 (a)

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PRACTICE GUIDE—Location of a particular classroom or program is an administrative decision not within the purview of an ARD committee. Location is different from the determination of an individual student's special education placement. The location of classrooms and programs is an administrative decision within the discretion of the District. School district administration may centralize the location of certain programs to efficiently use the District's resources in the service of students with disabilities. [3]

What does it mean to have a continuum of placement options for students? The District shall make available a continuum of alternative placements listed in the definition of special education under 34 C.F.R. § 300.38 (e.g., instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions), and make provision for supplementary services to be provided in conjunction with placement in the general education setting to facilitate such placement.[4] The IEP, evaluations and other relevant data guide the ARD committee in making placement decisions.

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

Before moving a student to a more restrictive environment[5], the student's ARD committee shall consider—

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

[3] *White ex rel. White v. Ascension Parish School Board*, 343 F.3d 373 (5th Cir. 2003).
[4] 34 C.F.R. § 300.115(b); 34 C.F.R. § 300.115(b); 19 TEX. ADMIN CODE §89.1005
[5] 34 C.F.R. § 300.116(e)

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- What effect does the student's presence have on the general education classroom environment? [6]

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

Residential Treatment Centers (RTCs) or private residential programs are included in the continuum of placements.[7] The District is not required to place a student in a private residential program unless such placement is necessary to provide special education and related services. In order for a residential placement to be appropriate under the IDEA, the placement must be (1) essential in order for the student to receive a meaningful educational benefit, and (2) primarily oriented toward enabling the student to obtain an education. The district is not required to bear the costs of private residential services that are primarily aimed at treating a student's medical difficulties or enabling the student to participate in non-educational activities. [8] [9]

[6] *Daniel RR v. State Bd. of Ed.*, 874 F.2d 1036 (5th Cir. 1989)
[7] 34 C.F.R. § 300.115
[8] *Richardson ISD v. Michael Z*, 580 F.3d 286 (5th Cir. 2009); 34 C.F.R. § 300.104
[9] Tex. Ed. Code § 29.008; Tex. Ed. Code § 29.012; 19 TEX. ADMIN. CODE § 89.1092; 34 C.F.R. § 300.325(a)

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

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

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

- if, at the most recent ARD committee meeting that the parents or guardians attended prior to removal of the student from the district, the parents or guardian did not inform the ARD committee that they were rejecting the placement proposed by the District to provide FAPE to the student, including stating their concerns and their intent to enroll the student in a private school at public expense;

- if, at least 10 District business days (including any holidays that occur on a business day) prior to the removal of the student from the district, the parents or guardians did not give written notice to the District that they were withdrawing the student and seeking reimbursement from the District for the cost of the private school placement;

- if, prior to the parents or guardians' removal of the student from the District, the District informed the parents or guardians, through the notice requirements described in these Operating Procedures, of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the student available for the evaluation; or

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- if a hearing officer or judge finds that the parents acted unreasonably. [10]

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

How does the district provide FAPE via virtual or remote instruction?

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

According to nonbinding guidance from **OSEP on September 28, 2020**, ARD committees should consider—

- "how a student's IEP will be implemented with traditional in-person instruction
- how services also could be provided through remote/distance instruction if circumstances require a change to distance learning or a hybrid model."[11]

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

- alternate available instructional methodologies or delivery;
- online instruction, teleconference, direct instruction via telephone or videoconferencing; and

[10] *School Comm. of Burlington v. Department of Educ. of Mass.,* 471 U.S. 359, 369 (1985); *see also,* 34 C.F.R. 300.148(c)*; Forest Grove Sch. Dist. v. T.A.,* 557 U.S. 230, 129 S. Ct. 2484, 2496 (2009)
[11] OSEP. ***Part B Implementation of IDEA Provision of Services in the Current COVID-19 Environment Q&A Document*****.** September 28, 2020.

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- consultative services to the parent, if feasible and appropriate.[12]

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

The Campus ARD Administrator may coordinate with the developers of their current assessment instruments to determine if the instruments can be administered or completed remotely, without significantly impacting the validity and reliability of the results. Tests and other evaluation materials must be used for the purposes for which the assessments or measures are valid and reliable, and must be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessments.[13]

Demonstrations of this procedure's implementation may include, but are not limited to, examples such as:

- Schedules of services
- Residential Treatment Center applications
- Lists/descriptions of Placements options
- Centralized program descriptions
- LRE supplements
- Evaluation reports
- Training materials

[12] *Id.*

[13] 34 C.F.R. § 300.304(c)(l)(iii)-(v)

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