



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 students 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.

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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 evidence-based intervention; and
- Other academic or behavior support services.

Each school year, the LEA must notify the parent of every non-special education child who receives assistance from the district for learning difficulties, including the use of intervention strategies about such assistance.

The notice must:

- Be provided when the child begins to receive the assistance for that school year.
- Be written in English or, to the extent practicable, the parent's native language; and include:
 - a reasonable description of the assistance that may be provided to the child, including any intervention strategies that may be used
 - Information collected regarding any intervention in the base tier of a multi-system of supports that has previously been used with the child
 - An estimate of the duration for which the assistance, including through the use of intervention strategies, will be provided
 - The estimated time frame within which a report on the child's progress with the assistance, including any intervention strategies used, will be provided to the parent.

- A copy of the Texas Education Agency explanation of the options and requirements for providing assistance to students who have learning difficulties or who need or may need special education.

The notice described in this framework maybe be provided to the child's parent at a meeting of the team established for the child under section 504 of the Rehabilitation Act of 1973, if applicable

Notice of Rights

The TEA will develop a notice for distribution and posting on the agency's website that indicates: The change made from 2016 to 2017 in reporting requirements for school districts and open-enrollment charter schools regarding the special education representation indicator adopted in the Performance-Based Monitoring Analysis System Manual. In plain language, the rights of a child under both federal and state law and the general process available to initiate a referral of a child for a full individual and initial evaluation to determine the child's eligibility for special education services.

- The LEA must include in the notice developed by the TEA information indicating where the local processes and procedures for initiating a referral for special education services eligibility evaluation may be found.
- The LEA must provide the notice to the parent of each child who attends school in the LEA or at the LEA at any time during the 2019-20 school year.
- The LEA must also make the notice available on request to any person.
- The notice must be available in English and Spanish, and the LEA must make a good faith effort to provide the notice in the parent's native

LEA Specific Information:

Child Find: 0-5 years old

LEA obtains MOU with Early Childhood Intervention (ECI and area Head Start programs to assist with child find.

- ECI referrals are evaluated and an ARD is held by their 3rd birthday
- Head Start notifies LEA's Special Education Director or diagnostician of referrals via Fax, encrypted email, or phone call.
- Transition conference is scheduled with ECI casemanager and family to inform the

family of possible services available under Part B and support family involvement in the transition planning process prior to the child's 3rd birthday.

- Evaluation staff invites ECI casemanager to participate in the initial ARD meeting.
- Children with auditory and visual impairments are evaluated if found eligible, and are provided services at birth from LEA.

LEA's use Child Find flyers to find and locate possible eligible children with disabilities by distributing in the following avenues: Libraries, daycares, school entryways, doctor offices, and LEA's website.

The district provides information and training to all campuses on the process for referring children to special education. Information is also provided to parents/community through the student handbook, district website, and community advertisements.

LEA communicates with McKinney-Vento district representative to locate student and provides information in regards to child find and the services and supports the child may eligible.

LEA holds annual meetings with Private/Home schools to discuss proportionate share and services available.

The LEA uses an RtI model (multi tiered intervention model) for meeting the needs of students.

LEA conducts an annual review of RDA data to address inappropriate over identification or disproportionate representation. The LEA address areas of concerns within the District Improvement plan and/or Targeted Improvement plan.

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;
 - Evidence based practices that address 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;

- o The Toward Excellence, Access, and Success (TEXAS) Grant Program and the Teach for Texas Grant Program established;
- o The need for students to make informed curriculum choices to be prepared for success beyond high school; and
- o Sources of information on higher education admissions and financial aid;
- Resources needed to implement identifies strategies;
- Positive behavior interventions and support, including interventions and support that integrate best practices on grief informed and trauma-informed care;
- 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 its 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.

LEA Specific Information:

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 that the student's parents;
- Is married; or
- Has had the disabilities of minorities 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 in junior high or middle school 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 for a junior high or middle school student must:

- Identify educational goals for the student;
- Include diagnostic information, appropriate monitoring and intervention, and other evaluation strategies;
- Include an intensive program of instruction;
- 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 required to meet with each student entering grade nine and his/her parents to review graduation plan options, including the Foundation High School Program options for distinguished level of achievement and endorsements. A personal graduation plan must identify 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.

LEA Specific Information:

IEP progress reports are provided to parents according to the frequency set by the ARD committee.

A copy of the Personal Graduation Plan (PGP) will be provided to the ARD committee for review at the annual ARD. The PGP will be reviewed no less than annually by the ARD committee and provided as a supplement to the student's annual ARD document.

Closing the Gap

ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965 (ESEA)

In 2015, Congress passed the Every Student Succeeds Act, which reauthorizes the ESEA to ensure that every student achieves and replaces the previous version of the law, the No Child Left Behind Act, which was enacted in 2002. ESEA/ESSA

A targeted assistance school program must serve participating students identified as eligible for targeted assistance by using methods and instructional strategies to strengthen the academic program of the school through activities, which may include a schoolwide tiered model to prevent and address behavior problems, and early intervening services, coordinated with similar activities and services carried out under the Individuals with Disabilities Education Act (IDEA) Part B.

An eligible school operating a schoolwide program must develop a comprehensive plan that includes a description of the strategies that the school will be implementing to address school needs, including a description of how such strategies will address the needs of all students in the school, but particularly the needs of those at risk of not meeting the challenging state academic standards, through activities which may include implementation of a schoolwide tiered model to prevent and address FEDERAL AND STATE REQUIREMENTS CITATIONS problem behavior, and early intervening services, coordinated with similar activities and services carried out under the IDEA Part B.

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:
 - o Prescribes the grade level or course a student must be enrolled in to be eligible; and
 - o 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 of 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:
 - o Prescribes the grade level or course a student must be enrolled in to be eligible; and
 - o 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 Speciality classrooms such as Life skills program, Behavior Intervention classes, 18+ programs, etc.

Dyslexia Services

NOTIFICATION

Parents or guardians of a student with dyslexia or a related disorder must be informed of all services and options available to the student, including general education interventions under response to intervention and multi-tiered systems of support models and options under federal law, including Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973.

At least five school days before any evaluation or identification procedure is used selectively with an individual student, the local educational agency (LEA) must provide written notification to the student's parent or guardian or another person standing in parental relation to the student.

The notice must be in English, or to the extent practicable, the individual's native language and must include the following:

- A reasonable description of the evaluation procedure to be used with the individual student
- Information related to any instructional intervention or strategy used to assist the student prior to evaluation
- An estimated time frame within which the evaluation will be completed
- Specific contact information for the campus point of contact, relevant parent training and information projects, and any other appropriate parent resources.

Before a full individual and initial evaluation is conducted to determine whether a student has a disability, the LEA must comply with the PRIOR WRITTEN NOTICE and REFERRAL FOR POSSIBLE SPECIAL EDUCATION SERVICES frameworks, provide all information required preceding this section, and provide:

- A copy of the Notice of Procedural Safeguards
- An opportunity to give written CONSENT FOR INITIAL EVALUATION
- A copy of the required RIGHT TO INFORMATION.

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 conducted by individuals who are trained in valid, evidence-based assessments and that are trained to appropriately evaluate students for dyslexia and related disorders.

Teachers who screen students with dyslexia and related disorders must be trained in instructional strategies that use individualized, intensive, multisensory, phonetic methods and a variety of writing and spelling components described in *The Dyslexia Handbook: Procedures Concerning 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 LEA may not use early intervention strategies, including multi-tiered systems of support, to delay or deny the provision of a full and individual evaluation to a child suspected of having a specific learning disability, including dyslexia or a related disorder.

The board of trustees of the LEA must ensure that procedures for identifying a student with dyslexia or a related disorder and for providing appropriate, evidence-based instructional services to the student are implemented.

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.

In order to support and maintain full educational opportunity for students with dyslexia and related disorders and consistent with federal and state law, the LEA must provide each student with dyslexia or a related disorder access to each program under which the student qualifies for services.

- 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 evidence-based reading program for students with dyslexia and related disorders:

- 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*.

Teachers who 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*.

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 and characteristics of dyslexia and related disorders;
- Information on testing and diagnosis of dyslexia and related disorders;
- Information on effective strategies for teaching students with dyslexia and related disorders;
- Information on qualifications of those delivering services to students with dyslexia and related disorders;
- Awareness of information on accommodations and modifications, especially allowed for standardized testing.
- Information on eligibility, evaluation requests, and services available under IDEA and Section 504 of the Rehabilitation
- DOCUMENT/ PRACTICE FEDERAL AND STATE REQUIREMENTS CITATIONS Act of 1973, and information on the response to intervention process; and P Contact information for the relevant regional and/or LEA dyslexia and related disorders specialists.

The LEA must provide to parents of children suspected to have dyslexia or a related disorder a copy or a link to the electronic version of The Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders.

Dyslexia Services

The district will report all students identified with dyslexia through PEIMS. The campus diagnostician or campus 504 coordinator are responsible for submitting the Dyslexia PEIMS Data Sheet.

Information reported includes:

- If the student is identified as having dyslexia or a related disorder;
- If the student receives services for dyslexia or a related disorder through special education or Section 504;
- If the student receives services that meet applicable dyslexia program criteria established by SBOE and is provided by a person with specific training; and
- If on the basis of having dyslexia or a related disorder, the student is permitted to use modifications in the classroom or accommodations in the administration of state assessments.

In accordance with the program approved by the SBOE, the board of trustees of the district will provide for the treatment of any student determined to have dyslexia or a related disorder. In order to support and maintain full educational opportunity for students with dyslexia and related disorders and consistent with federal and state law, the district provides each student with dyslexia or a related disorder access to each program under which the student qualifies for services. The district's techniques for treating dyslexia and related disorders are implemented in accordance with *The Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders*. The district has purchased an evidence-based reading program for students with dyslexia and related disorders. Teachers who treat students with dyslexia and related disorders are 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*.

With respect to the location of the services:

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

Parent Education Program

The district provides 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 and related disorders;
- Information on effective strategies for teaching students with dyslexia and related disorders;

- Information on qualifications of those delivering services to students with dyslexia and related disorders;
- Awareness of information on accommodations and modifications, especially allowed for standardized testing.
- Information on eligibility, evaluation requests, and services available under IDEA and Section 504 of the Rehabilitation and information on the response to intervention process; and
- Contact information for the relevant regional and/or district dyslexia and related disorders teachers.

The district provides to parents of children suspected to have dyslexia or a related disorder, the electronic version of *The Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders* through a link on the district website.

The district dyslexia plan contains district specific information regarding the screening, evaluation, identification, instruction and services related to dyslexia.

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)

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

The TEA does not have a performance indicator in any agency monitoring system, including the performance-based monitoring analysis system, that solely measures an LEA's aggregated number or percentage of enrolled students who receive special education services.

Referral for Initial Evaluation

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.

If the student continues to experience difficulty in the general education classroom after the provision of intervention, the LEA must refer the student for an initial evaluation.

Whenever a student is referred for an initial evaluation, the LEA must provide PRIOR WRITTEN NOTICE of its proposal or refusal to evaluate the student.

Before conducting a full individual and initial evaluation, the LEA must obtain from the parent CONSENT FOR INITIAL EVALUATION.

For children who are homeless or in substitute care, the LEA must also provide notice to the child's educational decision-maker and caseworker regarding requests or referrals for an evaluation under Section 504, or special education.

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.

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.

LEA Specific Information:

Referral for an in-district struggling student goes through the evaluation team for review. The campus student support team (Rtl, SST, CARE, etc.) provides information to the appropriate evaluation staff member using the referral form along with progress monitoring data. The evaluation staff member reviews the data and determines if adequate efforts were made to provide general education intervention. If the data is sufficient, then the evaluation staff member determines the scope of the evaluation based on the campus and parent data/input. A meeting is scheduled with the parent to provide the following: *Notice of Procedural Safeguards: Rights of Parents of Students with Disabilities*, *A Guide to the ARD Process*, Receipt for Procedural Safeguards and ARD Guide (to be signed by parent), Notice of Proposal to Evaluate, Consent for Full and Individual Evaluation (to be signed by parent) and any other relevant forms (i.e. Consent for Disclosure of Confidential Information).

When a parent makes a written request to a campus administrator of the LEA or the Director of Special Education, the LEA will, no later than the 15th school day after the date the LEA received the request:

- provide an opportunity for the parent to give written consent for the evaluation; or

- refuse to provide the evaluation and provide Prior Written Notice and the procedural safeguards.

Any written request received at the campus, must be forwarded to the Director of Special Education immediately.

For a student who is not enrolled in LEA and receiving ECI services, the initial referral process begins with contact from the ECI Early Intervention Specialist (EIS). An evaluation staff member will attend the ECI Face-to-Face meeting and provide the parent with information regarding the referral process. The parent is given the information for the PPCD evaluation team representative to contact if the parent decides to pursue an evaluation for services in the public school. When contacted, the evaluation team representative will schedule a meeting to discuss the parent's referral. If the parent does want to pursue an evaluation, the PPCD evaluation team follows through with the referral process procedures, including providing *Notice of Procedural Safeguards: Rights of Parents of Students with Disabilities*, *A Guide to the ARD Process*, Receipt for Procedural Safeguards and ARD Guide (to be signed by parent), Notice of Proposal to Evaluate, Consent for Full and Individual Evaluation (to be signed by parent) and any other relevant forms (i.e. Consent for Disclosure of Confidential Information).

For a student who is not enrolled in the LEA and not receiving ECI services, the initial referral process begins with contact from the parent. The evaluation team will schedule a meeting to discuss the parent's concerns and request for testing. If an evaluation is warranted, the evaluation team follows through with the referral process procedures including providing *Notice of Procedural Safeguards: Rights of Parents of Students with Disabilities*, *A Guide to the ARD Process*, Receipt for Procedural Safeguards and ARD Guide (to be signed by parent), Notice of Proposal to Evaluate, Consent for Full and Individual Evaluation (to be signed by parent) and any other relevant forms (Consent for Disclosure of Confidential Information).

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 Deaf or Hard of Hearing 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 NON-CATEGORICAL 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.

LEA Specific Information:

The LEA will annually review and update as needed the ECI-LEA Memorandum of Understanding.

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 foster parent agrees to participate in making educational decisions on the child's behalf; and
- The foster parent agrees to complete a training program for surrogate parents that complies with the training program requirements of this section.
- The foster parent completes a TRAINING PROGRAM FOR FOSTER AND SURROGATE PARENTS before the next scheduled admission, review, and dismissal (ARD) committee meeting for the child but not later than the 90th day after the date the foster parent begins acting as the parent for the purpose of making special education decisions.

Not later than the fifth day after the date the child with a disability is enrolled in a school, TEC 29.015(d) DOCUMENT/ PRACTICE FEDERAL AND STATE REQUIREMENTS CITATIONS the DFPS must inform the appropriate LEA if the child's foster parent is unwilling or unable to serve as a parent for the purposes of this framework.

The LEA must ensure that the foster parent has received a TRAINING PROGRAM FOR FOSTER AND SURROGATE PARENTS that complies with the requirements of this framework. 89.1047(a)(1) Once an individual has completed a TRAINING PROGRAM FOR FOSTER AND SURROGATE PARENTS, the individual must not be required by any LEA to complete additional training in order to serve as the parent for the child or other children with disabilities who are in foster care.

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.

If the district denies a foster parent the right to serve as a parent, the foster parent will be provided with written notice within seven calendar days from the date on which the decision is made. The notice must:

- Specifically explain why the foster parent is being denied the right to serve as the child's parent; and
- Inform the foster parent of the right to file a complaint with the Texas Education Agency.

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 foster parent of the child is unwilling or unable to serve as the parent;
- The child does not reside in a foster home;
- 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 ensure the surrogate parent :

- Is willing to serve in that capacity;
- Visits the child and the child's school;
- Consults with persons involved in the child's education, including teachers, caseworkers, court-appointed volunteers, guardians ad litem, attorneys ad litem, foster parents, and caretakers;

- Reviews the child's educational records;
- Attends meetings of the child's ARD Committee;
- Exercises independent judgment in pursuing the child's interests;
- Ensures the child's due process rights under applicable state and federal law are not violated; and
- Completes a training program within 90 days of assignment as a surrogate parent.

CHILDREN WHO ARE HOMELESS OR IN SUBSTITUTE CARE

For children who are homeless or in substitute care, the LEA must also provide notice to the child's educational decision maker and caseworker regarding:

- An ADMISSION, REVIEW, AND DISMISSAL COMMITTEE MEETING
- MANIFESTATION DETERMINATION reviews
- PRACTICE FEDERAL AND STATE REQUIREMENTS CITATIONS
- The appointment of 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..

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.

COURT APPOINTED SURROGATE PARENT FAILURE TO PERFORM DUTIES

If a court appoints a surrogate parent for the child with a disability, and the LEA determines that the surrogate parent is not properly performing the duties listed under this framework, the LEA must consult with the DFPS regarding whether another person should be appointed to serve as the surrogate parent for the child.

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:

The LEA will abide by any court documents that establish educational decision making rights for one parent. When a court order has not been provided, the district will consider the parent who enrolled the child as having educational decision making rights.

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 parent; 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 exception when the consent is not required to disclose information applies.

An adult student who holds rights under the IDEA is not prohibited from executing supported decision-making agreement or a valid power of attorney after the transfer of parental right.

Notification of the Transfer of Rights by Age 17

Not later than one year before the 18th birthday of a child with a disability, the LEA must provide the child and the child's parent written notice that:

- A child with a disability who is age 18 will have the same right to make educational decision as a child without a disability;
- All rights granted to the parent under IDEA transfer to the child unless the parent or other individual has been granted guardianship of the child, except the LEA must provide any notice required under IDEA to the adult student and the parent;
- All rights granted to the parent under IDEA, including the right to receive any notices required by IDEA, will transfer to an 18 year old who is incarcerated in an adult or juvenile state or

local correctional institution, unless the child's parent or other individual has been granted guardianship; and

- Information and resources regarding guardianship, alternatives to guardianship, including a supported decision-making agreement, and other supports and services that may enable the adult student to live independently; and

The district must ensure the IEP includes a statement that the LEA provided the written notice regarding transfer of rights of the child and information and resources regarding guardianship, alternatives to guardianship including a supportive decision-making agreement, and other supports and services that may enable the adult student to live independently.

Notification of the Transfer of Rights at 18

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

At the time the child reaches age 18, the LEA must notify the adult student and the parents of the transfer of rights, including a statement:

- The adult student has the same right to make educational decisions as a child without a disability; and
- All rights granted to the parent under IDEA have transferred to the adult student, unless the parent or other individual has been granted guardianship except the district must provide any notice required under IDEA to the adult student and parent;
- Information and resources regarding guardianship, alternatives to guardianship, including supported decision-making agreement, and other supports that may enable the student to live independently; and
- Provides contact information for the parties to use in obtaining additional information.

Right to Information Regarding Guardianship and Alternatives

If a child with a disability or the child's parent requests information regarding guardianship or alternatives to guardianship from the district, the district will provide to the child and parent information and resources on supported decision-making agreements.

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.

LEA Specific Information:

When considering removal of an eligibility for a disability, including speech, a REED may be conducted during the ARD meeting to determine if a student continues to meet eligibility criteria. Eligibility includes the presence of a disability and need for specially designed instruction.

When the ARD committee is considering dismissal from a service that does not change the student's eligibility, a REED is not required prior to dismissing the service. The decision to dismiss the student from the service can be based on mastery of goals, student performance, progress notes, observation or no longer demonstrating a need for the service. A new eligibility form for the service will be completed by the service provider and submitted to the ARD committee.

A REED is not required prior to conducting a functional behavior assessment since the assessment is not used for eligibility purposes. The FBA can be a stand alone report and not incorporated into the FIE determination report.

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.

In Texas, the group of qualified professionals that determines whether the child is a child with a disability and the educational needs of the child is the child's ADMISSION, REVIEW, AND DISMISSAL COMMITTEE

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:
 - o Are selected and administered so as not to be discriminatory on a racial, cultural or sexual basis;
 - o 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;
 - o Are used for the purposes for which the assessments or measures are valid and reliable;
 - o Are administered by trained and knowledgeable personnel; and
 - o 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 services 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.
- It implements assessment procedures that differentiate between language proficiency and disability.

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 45 school days of receiving parental consent for the evaluation, unless:

- If a student has been absent three or more days, the timeframe will be extended by the number of school days equal to the number of days the student has been absent since receiving the signed consent. A student is considered absent if they are absent at the school's official attendance taking time for PEIMS.
- For students currently enrolled in the LEA, if signed consent is received at least 35 school days but less than 45 school days before the last instructional day of the school year, the evaluation will be completed and the written report provided to the parent by June 30.

- The child transfers from one LEA to another when an evaluation is pending and the LEA complies with the Transfer Students section.
- School day does not include a day that falls after the last instructional day of the spring semester and before the first instructional day of the subsequent fall semester
- The child is considered absent for the school day if the child is not in attendance at the school's official attendance taking time or the alternate attendance taking time set for that child
- The child is considered in attendance if the child is off campus participating in an activity that is approved by the school board and is under the direction of a professional staff member of the LEA, or an adjunct staff member who has a minimum of a bachelor's degree and is eligible for participation in the Teacher Retirement System of Texas.

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 services 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 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.
- An evaluation must be included as part of the Summary of Performance for a child graduating under certain conditions
- An evaluation is not required before the termination of the child's eligibility due to exceeding the age for a free appropriate public education under state law.
-

- The scope of a reevaluation for the child with a visual impairment must be determined by a multidisciplinary team that includes a certified orientation and mobility specialist.

An evaluation is not required before the termination of the child's eligibility due to exceeding the age for a free appropriate public education under state law.

The scope of a reevaluation for the child with a visual impairment must be determined by a multidisciplinary team that includes a certified orientation and mobility specialist.

LEA Specific Information:

Prior to the initial provision of services, the district must conduct a full and individual evaluation to determine whether the student has a disability and the educational needs of the student. The initial provision of services is defined as the first time a student is determined eligible for special education and the parent gives consent for services.

For students dismissed from special education or whose parents revoked consent for special education services, any future evaluation will be considered an initial evaluation. Services provided on the basis of the new evaluation will also be considered the initial provision of services.

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.

LEA Specific Information:

The Summary of Performance and the most recent Full and Individual Evaluation is mailed to the student no later than four weeks after termination of services due to graduation or exceeding age eligibility.

Autism

The district must comply with the Evaluation Procedures section.

The student must be evaluated in areas of suspected disability.

In Texas, the group of qualified professionals that determines whether the child is a child with a disability and the educational needs of the child is the child's Admission, Review, and Dismissal Committee.

Evaluation Procedures

The multidisciplinary team for an autism evaluation will consist of but is not limited to, a licensed specialist in school psychology, an educational diagnostician, and a speech language pathologist. The written report of evaluation by the group of qualified professionals must include specific recommendations for behavioral interventions and strategies.

Eligibility Criteria

Autism means a developmental disability significantly affecting verbal communication, nonverbal communication, and social interaction. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements; resistance to environmental change or change in daily routines; and unusual responses to sensory experiences.

The characteristics of autism are generally evident before age three, but the child who manifests characteristics after age three could be identified as having autism if the eligibility criteria are satisfied.

Children with pervasive developmental disorders are included under the disability category of autism.

Autism does not apply if the child's educational performance is adversely affected primarily because the child has an Emotional Disturbance.

Deaf-Blindness

The district must comply with the Evaluation Procedures section.

The student must be evaluated in areas of suspected disability.

In Texas, the group of qualified professionals that determines whether the child is a child with a disability and the educational needs of the child is the child's Admission, Review, and Dismissal Committee. For the child from birth through two years of age with a visual impairment and/or who is deaf or hard of hearing, an individualized family services plan meeting must be held in place of an ARD committee meeting and the district must comply with the Ages 0 - 5 procedures.

Evaluation Procedures

The multidisciplinary team must include a teacher or the visually impaired and teacher of the deaf or hard of hearing. The procedures and materials used for the assessment and placement of the child who is deaf or hard of hearing must be in the child's preferred mode of communication.

The evaluation data reviewed in connection with the determination of the child's disability based on deaf-blindness must comply with the evaluation procedures of Deaf or Hard of Hearing and Visual Impairment.

Eligibility Criteria

Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness. In meeting the criteria for deaf-blindness, the child with deaf-blindness is one who:

- Meets criteria for deaf or hard of hearing and visual impairment;
- Meets eligibility criteria for visual impairment and has a suspected hearing loss that cannot be demonstrated conclusively, but there is no speech at an age when speech would normally be expected, as determined by a speech/language therapist, a certified speech and language therapist, or a licensed speech language pathologist;
- Has documented hearing and visual losses that, if considered individually, may not meet the requirements for deaf or hard of hearing or visual impairment, but the combination of such losses adversely affects the student's educational performance; or
- Has a documented medical diagnosis of a progressive medical condition that will result in related auditory and visual losses that, without special education intervention, will adversely affect educational performance.

Deaf or Hard of Hearing

The district must comply with the Evaluation Procedures section.

The student must be evaluated in areas of suspected disability.

In Texas, the group of qualified professionals that determines whether the child is a child with a disability and the educational needs of the child is the child's Admission, Review, and Dismissal Committee. For the child from birth through two years of age with a visual impairment and/or who is deaf or hard of hearing, an individualized family services plan meeting must be held in place of an ARD committee meeting and the district must comply with the Ages 0 - 5 procedures.

The terms auditory impairment, hearing impairment, and deaf and hard of hearing are all referred to in Texas law and have the same meaning while federal law generally uses the terms deafness and hearing impairment.

Evaluation Procedures

The multidisciplinary team must include a teacher of the deaf or hard of hearing. The procedures and materials used for the assessment and placement of the child who is deaf or hard of hearing must be in the child's preferred mode of communication.

The evaluation data reviewed in connection with the determination of the child's disability based on an auditory impairment must include:

- An otological examination performed by an otolaryngologist, or by a licensed medical doctor with documentation that an otolaryngologist is not reasonably available;
- An audiological evaluation performed by a licensed audiologist;
- A description of the implications of the hearing loss in a variety of circumstances with or without recommended amplification; and
- An assessment of the child's potential for communications through a variety of means, including: oral (spoken) and aural (hearing) means; fingerspelling; or sign language.

Eligibility Criteria

Deafness means a hearing impairment that is so severe that the child is impaired with processing linguistic information through hearing, with or without amplification, that adversely affects the child's educational performance. Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects the child's educational performance but that is not included under the definition of deafness.

Emotional Disturbance

The district must comply with the Evaluation Procedures section.

The student must be evaluated in areas of suspected disability.

In Texas, the group of qualified professionals that determines whether the child is a child with a disability and the educational needs of the child is the child's Admission, Review, and Dismissal Committee.

Evaluation Procedures

The multidisciplinary team for an autism evaluation must include a licensed specialist in school psychology or psychologist. The assessment of emotional or behavioral disturbance, for educational purposes, using psychological techniques and procedures is considered the practice of psychology. A person commits an offense if the person engages in the practice of psychology or represents that the person is a psychologist in violation of the Texas Occupations Code.

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

Eligibility Criteria

Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects the child's educational performance:

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

Emotional disturbance includes schizophrenia.

Emotional disturbance does not apply to a child who is socially maladjusted, unless the child also meets the criteria for having an emotional disturbance.

Intellectual Disability

The district must comply with the Evaluation Procedures section.

The student must be evaluated in areas of suspected disability.

In Texas, the group of qualified professionals that determines whether the child is a child with a disability and the educational needs of the child is the child's Admission, Review, and Dismissal Committee.

Evaluation Procedures

The multidisciplinary team must include an educational diagnostician or licensed specialist in school psychology. The evaluation data reviewed in making a determination of an intellectual disability must include a standardized individually administered test of cognitive ability and an adaptive behavior assessment in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety.

Eligibility Criteria

Intellectual disability means significantly sub-average general intellectual functioning that:

- Is reflected in an overall test score of cognitive ability that is at least two standard deviations below the mean, when taking into consideration the standard error of measurement of the test;
- Exists concurrently with deficits in adaptive behavior in at least two of the following areas:
 - Communication;
 - Self-care;
 - Home living;
 - Social and interpersonal skills;
 - Use of community resources;
 - Self-direction;
 - Functional academic skills;
 - Work;
 - Leisure;
 - Health; or
 - Safety
- Is manifested during the developmental period; and
- Adversely affects the child's educational performance.

Multiple Disabilities

The district must comply with the Evaluation Procedures section.

The student must be evaluated in areas of suspected disability.

In Texas, the group of qualified professionals that determines whether the child is a child with a disability and the educational needs of the child is the child's Admission, Review, and Dismissal Committee.

Evaluation Procedures

The multidisciplinary team must include two or more members from the following: educational diagnostician, licensed specialist in school psychology, speech language pathologist, teacher of the visually impaired, teacher of the deaf or hard of hearing, or licensed physician.

Eligibility Criteria

Multiple disabilities means impairments occurring at the same time and the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments.

A child with multiple disabilities is one who has a combination of disabilities and who meets all of the following conditions:

- The disabilities are expected to continue indefinitely; and
- The disabilities severely impair the child's performance in two or more of the following areas:
 - Psychomotor skills;
 - Self-care skills;
 - Communication;
 - Social and emotional development; or
 - Cognition.

A child who has more than one disability but does not meet the criteria may not be classified or reported as having multiple disabilities. Multiple disabilities does not include deaf-blindness.

A multiple disabilities report must be completed in addition to the disability reports for other identified impairments.

Noncategorical Early Childhood

The district must comply with the Evaluation Procedures section.

The student must be evaluated in areas of suspected disability.

In Texas, the group of qualified professionals that determines whether the child is a child with a disability and the educational needs of the child is the child's Admission, Review, and Dismissal Committee.

Evaluation Procedures

The multidisciplinary team must include the applicable members for Intellectual Disability, Emotional Disturbance, Specific Learning Disability, or Autism.

Eligibility Criteria

Noncategorical early childhood disability means the child is between the ages of three and five and is evaluated as having an Intellectual Disability, an Emotional Disturbance, a Specific Learning Disability or Autism.

A noncategorical early childhood disability report must be completed in addition to the disability reports for other identified impairment(s).

As a typical practice, SISD does not use the disability category of noncategorical early childhood unless there is a concern by the multidisciplinary team, including the parent, of the validity in applying the criteria of the other disability. If the team has an evaluation report that strongly supports one of the other disabilities, then it will be recorded as the primary disability rather than noncategorical early childhood.

Orthopedic Impairment

The district must comply with the Evaluation Procedures section.

The student must be evaluated in areas of suspected disability.

In Texas, the group of qualified professionals that determines whether the child is a child with a disability and the educational needs of the child is the child's Admission, Review, and Dismissal Committee.

Evaluation Procedures

The multidisciplinary team must include a licensed physician.

Eligibility Criteria

Orthopedic impairment means a severe orthopedic impairment that adversely affects the child's educational performance. Orthopedic impairments may be caused by: congenital anomaly, diseases (such as poliomyelitis and bone tuberculosis) and other causes, such as cerebral palsy, amputations and fractures or burns that cause contractures.

Other Health Impairment

The district must comply with the Evaluation Procedures section.

The student must be evaluated in areas of suspected disability.

In Texas, the group of qualified professionals that determines whether the child is a child with a disability and the educational needs of the child is the child's Admission, Review, and Dismissal Committee.

Evaluation Procedures

The multidisciplinary team must include a licensed physician, a physician assistant, or an advanced practice registered nurse with authority delegated under Texas Occupations Code, Chapter 37.

Eligibility Criteria

Other Health Impairment means due to chronic or acute health problems, the student exhibits limited strength, vitality, or alertness that adversely affects a child's educational performance.

The term health problems, includes but is not limited to, asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette's Disorder.

The term limited alertness includes a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment.

Specific Learning Disability

The district must comply with the Evaluation Procedures section.

The student must be evaluated in areas of suspected disability.

In Texas, the group of qualified professionals that determines whether the child is a child with a disability and the educational needs of the child is the child's Admission, Review, and Dismissal Committee.

Evaluation Procedures

The multidisciplinary team the child's regular general education teacher (or if the child does not have a regular teachers, a regular general education classroom teacher qualified to teach children of this age or if less than school age, an individual qualified by TEA to teach children this age) and at least one person qualified to conduct individual diagnostic examinations for children (educational diagnostician licensed specialist in school psychology).

Determinant Factors

Prior to and as part of the evaluation, and in order to ensure that underachievement in the child is not due to lack of appropriate instruction in reading or math, the following must be reviewed and considered:

- Data that demonstrates the child was provided with appropriate instruction in reading and/or math in the general education settings delivered by qualified personnel; and
- Data-based documentation of repeated assessment of achievement at reasonable intervals, reflecting formal evaluation of progress of the child during instruction, which was provided to the parent. Data-based documentation may include, but is not limited to, progress monitoring results, universal screeners, classroom tests based on grade-level curriculum, or other regularly administered assessment consistent with the child's specific instructional program.

If the student's lack of adequate achievement is due to determinant factors, the student is not eligible as a student with an SLD.

Observation

The child must be observed in the child's learning environment, including the regular classroom setting, to document the child's academic performance and behavior in the areas of difficulty. The observation can be done using information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation or by a member of the multidisciplinary team may conduct the observation of the child's academic performance in the regular classroom after the child has been referred. The disability report must

contain a statement of the relevant behavior, if any noted during the observation and the relationship of that behavior to the child's academic functioning.

Eligibility Criteria

Specific learning disability (SLD) is a disorder in one or more of the basic psychological processes involved in understanding or using language that is spoken or written and may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental dysphasia. The term does not include a learning problem that is primarily the result of visual, hearing or motor difficulties, of an intellectual disability, or emotional disturbance, or of environmental, cultural or economic disadvantage.

A child with an SLD impairment has been determined through a variety of assessment tool and strategies to meets the criteria for stated below and who does not achieve adequate for the child's age or to meet state-approved grade-level standards, in one or more of the following areas:

- Oral expression;
- Written expression;
- Listening comprehension;
- Basic reading skill;
- Reading fluency skills;
- Reading comprehension;
- Mathematics calculation; or
- Mathematics problem-solving.

The student's lack of achievement is indicated by performance on multiple measures such as in-class tests; grade average over time; norm- or criterion-referenced tests; statewide assessment or a process based on the child's response to evidence-based interventions.

WCSS utilizes the Core-Selective Evaluations Process (C-SEP) to determine if a student has a specific learning disability under the Pattern of Strengths and Weakness Model. C-SEP (Core-Selective Evaluation Process) is an efficient and comprehensive approach to identify students with Specific Learning Disability (SLD) by determining a pattern of strengths and weaknesses using the core tests of the Woodcock-Johnson (WJ) IV, Wechsler or Kaufman Batteries with additional "selective" testing conducted as needed. Each of the assessment batteries contain a "core" set of tests that provides a representative survey of abilities measured by the battery. Examiners can selectively administer additional tests to provide greater breadth of measurement in an area of cognition or linguistic competency or in a domain of achievement. The approach integrates multiple forms of data with individualized norm referenced test instruments by using cognitive, achievement, and oral language measures. Sound data analysis techniques are utilized within C-SEP to identify a

pattern of strengths and weaknesses (PSW) in order to determine if a Specific Learning Disability (SLD) exists.

When applying the Pattern of Strengths and Weakness Model, a determination must be made that:

- The child exhibits a patterns of strengths and weakness in:
 - Performance;
 - Achievement; or
 - Both;
- The pattern is relative to:
 - Age;
 - State-approved grade-level standards; or
 - Intellectual development;
- The pattern is evident as indicated by significant variance:
 - Among specific areas of cognitive function such as working memory and verbal comprehension; or
 - Between specific areas of cognitive function and academic achievement; and
- The pattern is relevant to the identification of SLD using appropriate assessments.

Exclusionary Factors

In order to determine a student has a SLD, the following must be considered concerning the effects of on the child's achievement level:

- A visual, hearing or motor disability;
- An intellectual disability;
- An emotional disturbance;
- Cultural factors;
- Environmental or economic disadvantage; or
- Limited English proficiency.

If the lack of adequate performance is the primary result of these factors, then the student does not qualify as a student with an SLD.

Speech or Language Impairment

The district must comply with the Evaluation Procedures section.

The student must be evaluated in areas of suspected disability.

In Texas, the group of qualified professionals that determines whether the child is a child with a disability and the educational needs of the child is the child's Admission, Review, and Dismissal Committee.

Evaluation Procedures

The multidisciplinary team must include licensed speech-language pathologist, certified speech and language therapist, or certified speech and hearing therapist.

Eligibility Criteria

Speech or language impairment means a communication disorder or a voice impairment that adversely affects the child's educational performance. The term communication disorder includes stuttering, impaired articulation, a language impairment, and a voice impairment.

Traumatic Brain Injury

The district must comply with the Evaluation Procedures section.

The student must be evaluated in areas of suspected disability.

In Texas, the group of qualified professionals that determines whether the child is a child with a disability and the educational needs of the child is the child's Admission, Review, and Dismissal Committee.

Evaluation Procedures

The multidisciplinary team must include a licensed physician.

Eligibility Criteria

Traumatic Brain Injury (TBI) means an acquired injury to the brain caused by an external physical force resulting in total or partial functional disability, or psychosocial impairment, or both and that adversely affects the child's educational performance.

TBI applies to open or closed head injuries resulting in impairments in one or more of the following areas:

- Cognition;
- Language;
- Memory;
- Attention;
- Reasoning;
- Abstract thinking;
- Judgement;
- Problem-solving;
- Sensory, perceptual, and motor abilities;
- Psychosocial behavior;
- Information processing; and
- Speech

TBI does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

Visual Impairment

The district must comply with the Evaluation Procedures section.

The student must be evaluated in areas of suspected disability.

In Texas, the group of qualified professionals that determines whether the child is a child with a disability and the educational needs of the child is the child's Admission, Review, and Dismissal Committee. For the child from birth through two years of age with a visual impairment and/or who is deaf or hard of hearing, an individualized family services plan meeting must be held in place of an ARD committee meeting and the district must comply with the Ages 0 - 5 procedures.

Evaluation Procedures

The multidisciplinary team must include a teacher of the visually impaired and a person who is appropriately certified as an orientation and mobility specialist (COMS).

The evaluation data reviewed in connection with the determination of the child's disability based on an visual impairment must include:

- A report by a licensed ophthalmologist or optometrist that states the visual loss in exact measures of visual field and corrected visual acuity at a distance or at a close range in each eye or if exact measures cannot be obtained, provides best estimates of visual loss and a prognosis whenever possible;
- A functional vision evaluation by a certified teacher of children with visual impairments, or a COMS, that includes performance tasks in a variety of environment requiring the use of both near and distance vision and recommendations concerning the need for a clinical low vision evaluation;
- A learning media assessment by a certified teacher of children with visual impairments that includes recommendations concerning which specific visual, tactual, and/or auditory learning media and appropriate for the child and whether there is a need for ongoing evaluation in this area; and
- An orientation and mobility evaluation performed by a COMS in a variety of lighting conditions and a variety of settings including in the child's home, school and community and in settings unfamiliar to the child.

Eligibility Criteria

Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects the child's educational performance and includes both partial sight and blindness. In meeting the criteria, the child with a visual impairment has been determined by a licensed

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

The child with a visual impairment is functionally blind if, based on the functional vision evaluation and the learning media assessment, the child will use tactual media, which includes braille, as a primary tool for learning to be able to communicate in both reading and writing at the same level of proficiency as other children of comparable ability.

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.

LEA Specific Information:

The LEA reserves the right to include additional information in the ARD document as deemed necessary to develop an appropriate IEP or address local policy.

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;
- A representative of the LEA 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.

LEA Specific Information:

Consent for Disclosure of Confidential Information is required from the parent or adult student prior to inviting an outside agency to participate in the ARD meeting. The decision to invite agencies to an ARD meeting will be based on the needs of the student. The LEA will make a good faith effort to obtain consent and invite a representative from any outside agency that will be providing or paying for transition services. Individuals with special knowledge or expertise with whom the district contracts for services do not require parental or adult student consent in order to be invited to the ARD meeting. The Notice of ARD meeting will indicate any individuals or agencies that have been invited.

When the parent or adult student brings an individual who does not meet the definition of “parent” to the meeting, the evaluation staff member will obtain Consent for Disclosure for Confidential Information prior to the start of the meeting and document in the ARD deliberations.

If the parent brings an advocate to the meeting, the evaluation staff member will contact the director of special education to determine if additional district staff need to be present at the ARD meeting. If the parent brings an attorney to the ARD meeting, the LEA will have the attorney for the district present at the ARD. If the parent does not provide notice at least 5 school days prior to the ARD of his/her intent to bring an attorney, then the meeting will be rescheduled for a mutually agreed upon date and time in which the special education director and attorney for the LEA is able to attend.

Procedures for setting up a properly constituted ARD committee meeting:

1. Upon learning of the need for an ARD either from the campus or by running reports, the diagnostician/SLP will coordinate with the campus to set up the ARD meeting.
2. The diagnostician/SLP will email the ARD coordinator with the details of the ARD meeting and the Coordinator will send out the ARD notice and invitation.
3. The ARD invitation will be sent to the campus administrator and special education teachers.
4. It is the responsibility of the Campus administrator to ensure the necessary ARD members from the campus are notified and in attendance including a general education teacher, special education teacher, and when applicable dyslexia specialist, CTE representative, LPAC representative and any other campus staff deemed necessary.
5. Wise County Shared Services will ensure that the appropriate related service personnel, such as OT, and PT, are in attendance when needed.

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.

LEA Specific Information:

If the parent chooses to audio record the meeting, then the LEA will also make a recording of the meeting. The LEA is not required to provide an audio copy of that recording to the parent.

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 the 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
- Within 5 school days, provide the parent with written notice explaining why the LEA refuses to convene a meeting

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.

Not later than when the child reaches age 14, 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 a 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.

The LEA must ensure that each child enrolls in the courses necessary to complete the curriculum requirements for the foundation high school program

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

- By age 14:
 - 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 involvement in the child's transition by the parent or other persons invited to participate;
 - If the child is at least 18 years of age, appropriate involvement in the student's transition and future by the parent and other persons is invited to participate by the adult student or the LEA;
 - Appropriate postsecondary education options, including preparation for postsecondary-level coursework;
 - Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment and where appropriate, independent living skills
 - Transition services, including courses of study, needed to assist the child in reaching those postsecondary goals
- By age 18:
 - Involvement in the student's transition and future by the adult student's parents and other persons if invited to participate by the adult student or district
 - Appropriate functional vocational evaluation;

- o Appropriate employment goals and objectives;
- o If the child has reached age 18, the availability of age-appropriate instructional environments, including community settings that prepare the student for post-secondary education or training, competitive integrated employment or independent living in coordination with the adult student's transition goals;
- o Appropriate independent living goals and objectives;
- o Appropriate circumstances for facilitating a referral of a child or the child's parent to a governmental agency or public benefits, including a referral to a governmental agency to place the child on a waiting list for public benefits available to the child; and
- o The use and availability of appropriate:
 - Supplementary aids, service, curricula and other opportunities to assist the child in developing decision-making skills; and
 - Supports and services to foster the child's independence and self-determination, including a supported decision-making agreements.

The LEA must comply with the Consent for Disclosure of Confidential Information guidelines when inviting other persons to ARD meetings or referring to governmental agencies.

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.

LEA Specific Information:

Formal and informal transition assessments may be used to determine the student's preferences and interests. Assessments may include, but are not limited to, interest inventories, aptitude tests, and interviews. Assessments may be completed by special education teachers, educational diagnosticians, or general education staff. The data collected through the transition assessment is documented in the transition section of the IEP. Since the data is used to develop post-secondary goals and not for eligibility determination, prior written notice and consent are not required to conduct a transition assessment.

The Texas Transition and Employment Guide is posted on the LEA website. Written information is provided to the parent on how to access the guide within the ARD document at the first meeting at which transition is discussed and at every annual ARD meeting thereafter.

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 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.

LEA Specific Information:

Academic performance includes any subject included in Texas Essential Knowledge and Skills or Prekindergarten Guidelines. All other areas of performance are considered functional. Both areas are documented in the IEP by special education personnel and reviewed during the ARD meeting.

Additional information regarding and examples of present levels academic achievement and functional performance can be found at: [ESC20 - Access to the General Curriculum Resources](#).

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.

LEA Specific Information:

A minimum of one annual goal is required for each student receiving special education services. Students on an alternative curriculum, a minimum of two objectives are required.

Goals are written in a measurable standards based IEP format, which include four components: timeframe, condition, behavior/objective and criteria. Determination of the need for academic and/or functional goals is based on the data in the present levels of academic achievement and functional performance. Only areas of critical need are addressed through annual goals.

It is indicated on the goals and objectives form as to the person(s) responsible for implementation.

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.

If the ARD committee determines that a BIP is appropriate, that plan must be included as part of the IEP and provided to each teacher with responsibility for educating the student. If a BIP is included as part of the IEP, the ARD committee shall review the plan and least annually, and more frequently if appropriate, to address:

- changes in the student's circumstances that may impact the student's behavior, such as;
 - the placement of the student in a different educational setting;
 - an increase or persistence in disciplinary actions taken regarding the student for similar types of behavioral incidents;
 - a pattern of unexcused absences; or
 - an unauthorized, unsupervised departure from the educational setting; or
- the safety of the student or others.

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;

- o Behavioral accommodation needs across settings; and
 - o 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).

LEA Specific Information:

Behavior:

A supporting factor to determine positive behavior supports and interventions could be a functional behavior assessment (FBA). A functional behavior assessment does not require a REED since the assessment is not used for eligibility purposes. The FBA may be a stand alone report and not incorporated into the FIE. In the case a Behavior Intervention Plan (BIP) is implemented, data must be collected to evaluate the effectiveness of the plan. Non-violent Crisis Prevention Intervention (CPI) training is offered each year to district staff. In addition, staff are offered the opportunity to attend trainings specific to behavioral supports at the regional education service center or other area trainings.

Limited English Proficiency (LEP)

Additional information regarding entry and exit criteria is located at <http://tea.texas.gov/bilingual/esl/education/>.

Deaf or Hard of Hearing

When a student is in a situation where direct communication is not possible, then a communication assistant or certified sign language interpreter is utilized.

The LEA and the RDSPD staff are included in ARD committee meetings. Regional Day School Program for the Deaf collaborates both within the LEA and for those students attending the RDSPD.

Upon request, the LEA provides the necessary documentation to facilitate the referral process to Texas School for the Deaf (TSD). For students attending TSD, the Regional Day School Program and LEA staff participate as needed in ARD meetings held at TSD.

The LEA supports the student in extracurricular activities by providing them the necessary communication assistance through the use of either a certified sign language interpreter or a communication assistant. The ARD committee determines the level of support needed based on the communication needs of the student for each individual activity.

Blind or Visually Impaired

Upon request, the LEA provides the necessary documentation to facilitate the referral process to Texas School for the Blind and Visually Impaired (TSBVI). For students attending TSBVI, LEA staff participate as needed in ARD meetings held at TSBVI.

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 aids 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 aids and services to be provided to the child, or on behalf of the child.

The term "supplementary aids and services" means aids, 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;

- o Transportation;
- o Health services;
- o Recreational activities;
- o Special interest groups or clubs sponsored by the LEA;
- o Referrals to other agencies that provide assistance to individuals with disabilities;
- o 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:
 - o Relates to instruction of children with disabilities; and
 - o 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:
 - o Persons from colleges, universities, private and nonprofit organizations, regional education service centers;
 - o Qualified LEA personnel; and
 - o 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:
 - o To enable the child to attain a standard of annual growth on the basis of the child's IEP; and

- o 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:
 - o To enable the child to attain a standard of annual growth on the basis of the child's IEP; and
 - o 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.

LEA Specific Information:

Related services are required only when an ARD committee determines that the service is necessary in order for a student to benefit from special education (necessary for the student to make reasonable progress toward the identified instructional goals).

There are many "related services" that might benefit a student with a disability, just as there are many services that might benefit a student who does not have a disability. However, the law does not require that such services be provided. Rather, the legal duty to provide a related service arises only when without the service the student's education program would become less than appropriate.

The decision for eligibility is based on assessment data that is current and thorough. Eligibility is made on an individual basis. An assessment for a related service answers these key questions:

1. Are educational/instructional objectives supported by this related service? What are they?
2. Is the provision of this service necessary for the student to benefit educationally? How?

If "YES" is the answer to both of these questions and there is data to support this, then the ARD committee will determine if the service is required. If the student needs the related service to benefit

from special education, the ARD committee, with recommendations from the service provider, determines the frequency, duration, and location of the service and the type of service (direct, indirect, or both).

When the ARD committee is considering dismissal from a service that does not change the student's eligibility, a REED is not required prior to dismissing from the service. The decision to dismiss the student from this service may be based on information contained in the PLAAFP (student's mastery of goals, student performance, progress notes, observation, or no longer demonstrating a need for the service). The eligibility form for the service will be completed by the service provider and submitted to the ARD committee. When the service provider is not able to be present at the ARD meeting, the provider will contact the parent prior to the ARD meeting to discuss the possibility of dismissal from their service.

If the service is to be provided less than daily then the provision of services must be clearly specified. When services are provided, specify direct/indirect regardless of the location.

Direct services refer to hands on, face-to-face interactions between the service provider and the student. These interactions can take place in a variety of settings including, but not limited to, the classroom, gym, therapy room, special education classroom, counseling office, playground, lunchroom, or general education classroom. Direct services may be provided in a pull-out method or integrated within the student's classroom in conjunction with classroom activities.

Indirect services are provided for the benefit of the student and do not require direct contact with the student. This includes working with staff or parents to improve their capacity to successfully work with the student. This can include face to face meetings, phone conferences, adapting materials, or working with staff. Indirect services may also include professionals or paraprofessionals engaging in activities such as modifying daily work or tests or consultation with others to meet the student's instructional needs or maintaining/servicing assistive technology devices. Monitoring alone does not constitute specially designed instruction. (Student Attendance Accounting Handbook)

Specially designed instruction means content, methodology, or delivery of instruction that has been adapted, as appropriate to the needs of an eligible child, to: address the unique needs that result from the child's disability and ensure access of the child to the general curriculum. For a student in the mainstream setting, special education personnel must be involved in the implementation of the student's IEP through the provision of direct, indirect, and/or support services to the student in the general education classroom and/or collaboration with the student's general education classroom teacher(s).

Procedures of creating accelerate instruction plans for special education students:

1. If a student fails to demonstrate proficiency on a state-mandated assessment, the student shall be provided accelerated instruction in accordance with state law.
2. The ARD committee is responsible for the development of accelerated instruction under Education Code 28.0211 and intensive programs of instruction under Education Code 28.0213 [see EHBC, legal]
3. Students at all grade levels who have been identified as being at risk of dropping out of school, who are not performing at grade level, or who did not perform satisfactorily on a state-mandated assessment, shall be provided accelerated and/or compensatory educational services based on needs assessment. The principal shall ensure that each identified student is receiving services. (see EHBC, local)
4. To ensure that all special education students who have failed to perform satisfactorily on a state-mandated assessment have accelerated instruction plans developed by a properly constituted ARD committee the following procedures will be followed:
 - a. Upon receipt of testing results the campus coordinator will consult with the campus diagnostician and/or SLP on any special education students who have not met the minimum requirements on the state-mandated test.
 - b. The diagnostician/SLP will then follow the procedures, for setting up a properly constituted ARD committee meeting or the ARD amendment process.

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:
 - o 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
 - o 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 FAPE is provided to the child at the TSD.

State and Districtwide 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 ESSA, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective IEPs.

Districtwide 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 this guidelines:

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

Foundation High School Program

TAC 89.1070; TEC 28.025; TEC 39.025;

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

- The child demonstrates mastery of the required state standards (or LEA standards if greater);
- Satisfactorily completes the credit requirements for graduation under the Foundation High School Program; and
- Achieves satisfactory performance on the state required assessments, unless the child's ARD Committee has determined that satisfactory performance on the required state assessments is not necessary for graduation.

A child receiving special education services may earn an endorsement if the child:

- Satisfactorily completes the requirements for graduation under the Foundation High School Program as well as the additional credit requirements in mathematics, science, and elective courses required for an endorsement with or without modified curriculum;
- Satisfactorily completes the courses required for the endorsement without any modified curriculum; and
- Performs satisfactorily on the required state assessments

In order for a child receiving special education services to use a course to satisfy both a requirement under the Foundation High School Program and a requirement for an endorsement, the child must satisfactorily complete the course without any modified curriculum.

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 districtwide 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 Foundation High School Program or 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:

- o 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;
- o Demonstrated mastery of specific employability skills and self-help skills which do not require direct on-going educational support of the LEA; or
- o 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.

LEA Specific Information:

Students must meet all state and district requirements in order to graduate and receive a regular high school diploma

For students who entered 9th grade in 2014-2015 and thereafter, students must meet the foundation high school program requirements as specified in 89.1070(b). Students may also earn an endorsement if the student meets the criteria in 89.1070(c).

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:
 - o Beyond the normal school year of the public agency;
 - o In accordance with the child's IEP; and
 - o 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 non-educational 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.

LEA Specific Information:

The location of services is based upon the types of services being provided and the number of students being served. Services may be provided at a centralized location, in the community or in the student's home. Site selection for services is determined by the district administration.

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.

LEA Specific Information:

Proposed changes may not commence until the form is received with the parent signature.

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 Reaching Closure and Consensus guidelines).

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.

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.

LEA Specific Information:

When a parent makes a written request for an initial evaluation to a campus administrator of the LEA or the Director of Special Education, the LEA will, no later than the 15th school day after the date the LEA received the request:

- Provide an opportunity for the parent to give written consent for the evaluation; or

- Refuse to provide the evaluation and provide prior Written Notice and the procedural safeguards.

Any written request received at the campus, must be forwarded to the Director of Special Education immediately.

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 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).

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 45 school 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.

LEA Specific Information:

An initial evaluation is sought for enrolled students for whom there is a suspicion of a disability which is leading to difficulty in making progress in the general curriculum. The lack of progress or limited progress could be caused by academic, cognitive, behavioral, social, emotional or physical challenges. For students currently enrolled in the ISD, students are provided with all the supports, services, and strategies available in the general education environment. When, despite adequate efforts, the student is not making adequate progress, consent will be sought.

For students who are not enrolled in the ISD but reside within the ISD, all requests for evaluation are sent to the special education department. For students attending a private school within the boundaries of the ISD, but not living in the district, the ISD will accept the referrals, gather data about the student, analyze the data, and determine if the district will do the evaluation. If the district determines not to perform an evaluation, Prior Written Notice will be completed and provided to the parent. Parents will be provided with information about their due process rights and a copy of the Procedural Safeguards. Reasons to refuse to test could include: lack of educational opportunity, second language issues, or socio-economic difficulties, adequate progress in current program, or district boundaries disputes.

The ISD requires that reasonable and sufficient efforts be made to gain consent from a parent/ adult student. In order for efforts to be sufficient, a minimum of 3 documented attempts must be made. Attempts may include, but not limited to, letter, phone, or personal contact. Letters may be sent by

mail, email, registered mail, or with the student. Phone calls may be made to home, cell, or work numbers and if contact is not made, then a message, either voice mail or live, must be left. Before the ISD will take legal steps to gain consent, personal contact must be attempted.

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 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).

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.

LEA Specific Information:

Initial consent for services will be obtained at the initial ARD meeting if the parent is in attendance and agrees with decisions made at the ARD. If the parent does not attend initial ARD meeting, the consent for initial placement will be sent home with the ARD paperwork to be signed. The evaluation staff member will contact the parent to explain the ARD paperwork and initial consent for services if the paperwork is not returned within five school days. If after three attempts initial consent for services is still not obtained, a ready, willing and able letter will be sent to the parent. Services will not begin until initial consent for services is returned.

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:
 - o 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 understands 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 one-time written consent to access Medicaid benefits following receipt of the Medicaid notification.

The LEA must provide an annual notification of Medicaid participation.

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:
 - o Require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive a FAPE;
 - o 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;
 - o 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;

- o 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;
- o 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
- o 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).

LEA Specific Information:

School Health and Related Services (SHARS) is a Medicaid program designed to allow school districts to seek federal reimbursement for certain health services performed for Special Education Students as defined by their IEP.

The school district may submit claims for SHARS services provided to students who meet the following criteria:

- Student must be Medicaid eligible at the time of the service.
- The student must be under 21 years of age.

- The SHARS services the student receives must be documented in the student's ARD/IEP.
- There must be a signed parental acknowledgment to release confidential information in the student's file.
- Providers must have current credentials and/or license that is up to date and not "lapsed" or in any kind of "grace" period.

The district may seek Medicaid Reimbursement for the following services:

- Counseling
- Psychological Services
- Occupational Therapy
- Physical Therapy
- School Health Services
- Speech Therapy
- Personal Care Services
- Special Transportation

The district may partner with consulting group to provide software for documentation of services, billing logs, processing of paper documentation and SHARS claims submission. More details on SHARS policies can be found on Health and Human Services Commission website

Participation in the SHARS program does not preclude a child from receiving similar or additional services by parent choice under another Medicaid program or provider in the private sector. A child's eligibility for Medicaid Services outside the school setting is not compromised by receiving SHARS services at school. The services provided at school are so the child may receive a Free and Appropriate Public Education, FAPE. Due to medical necessity, the child may need additional services outside of school.

Additionally, there is NO lifetime benefit cap for Medicaid services to children under the age of 21. SHARS is a program under the EPSDT (Early and Periodic Screening, Diagnosis and Treatment) program. Under EPSDT, there are no set limitations on Medicaid services to clients under 21, as long

as the service is medically necessary. The Medicaid services the child receives at school do not affect the type or amount of Medicaid services the child receives outside the school.

The following services are eligible to receive reimbursement assuming all other required documentation is in place:

- Audiology Services
- Assessment/Evaluation
- Counseling Services
- Nursing Services
- Occupational Therapy
- Personal Care
- Physical Therapy
- Physician Services
- Psychological Services
- Special Transportation
- Speech/Language Therapy

To access reimbursements under the Medicaid to Schools Program, SHARS, the district, along with the contracted vendor will extract eligible documentation and then submit to Texas Medicaid Healthcare Partnership (TMHP).

The district uses an electronic system for SHARS documentation and signatures. In order to maintain confidentiality of information, the district has put in place the following:

School districts must recognize the potential for misuse or abuse

- Staff members are required to maintain professional responsibility for their service delivery and their documentation
- The individual whose name is on the electronic signature and the school district bears the responsibility for the authenticity of the information attested to in the record

School districts must apply relevant administrative procedures , standards, and law

- Apply electronic signature at the time of service documentation and at each instance of service delivery
- Staff members will not share username/ password information
- System will allow access to staff members historical records
- System allows immediate access to records by state or federal agencies, and others who are authorized by law

School districts must ensure system and software products are protected

- A unique user-ID and an alphanumeric password consisting of at least eight characters
- Electronic Signature Verification must be verified at least once by the staff member that states, "I confirm that my electronic signature for all service delivery is based on correct, accurate and complete information. I also confirm that either myself or a designated person (if applicable) is authorized to submit service delivery documentation"

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 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 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 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).

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:
 - o Specifying the records that may be disclosed;
 - o Stating the purpose of the disclosure; and
 - o 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 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).

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:
 - o The IEP and supporting documents; and
 - o 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
 - o 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 state defined 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 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 and
- The parent and LEA agree to a specific time when the evaluation will be completed.

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

With regard to the status of the child, the new LEA must verify that the child was receiving special education services 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 until:

- Conduct an evaluation in compliance with the evaluation procedures framework or

- Develop, adopt, and implement a new IEP that is consistent with the ARD COMMITTEE guidelines within 30 school days from verification of special education services.

IEP for a Child with a Disability who Transfers During the Summer

With regard to the status of the child, the new district must verify that the child:

- Is a child with a disability; and
- Had an IEP in effect in the previous district.

The new district, in consultation with the parents, must provide the child with FAPE including services comparable to those described in the IEP from the previous district until the new district either:

- Adopts the IEP from the previous district; or
- Develops, adopts and implements a new IEP that is consistent with the Admission, Review and Dismissal Committee procedures.

The timeline for adopting the IEP from the previous district or developing, adopting and implementing a new IEP is the first day of school.

If there are eligibility concerns, conflicting information or non-compliance issues (all required components included, all signatures included, etc) the ARD committee may request additional evaluation to assist in educational planning and ensure compliance with federal and state regulations. A REED should be completed prior to conducting the evaluation when it is for the purpose of establishing eligibility or correcting noncompliance from the previous district. The REED will serve as the FIE until the additional evaluation has been completed. The district will conduct any evaluation in accordance with the Evaluation Procedures.

LEA Specific Information:

If the district determines it is necessary to conduct an evaluation on a student who transfers from outside the state, the evaluation will be considered an initial evaluation for special education. The timeline for an initial evaluation, including when the ARD must be held, applies. A REED is not required prior to conducting the evaluation but notice must be provided and consent obtained.

If there was conflicting information or non-compliance issues (all required components included, all signatures included, etc) the transfer committee may request additional evaluation to assist in

educational planning and ensure compliance with federal and state regulations. A REED may not be completed prior to conducting the evaluation when it is for the purpose of correcting noncompliance from the previous district. When a REED is provided by the previous district, the transfer committee may need to request the prior FIE from the former district.

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:

- 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 penological 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.

LEA Specific Information:

The LEA in which the detention center is located is responsible for providing special education services.

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:
 - o The end of the school year in which the child turns five; or
 - o 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.

LEA Specific Information:

When students receiving special education services are withdrawn from the LEA to attend a private/home school, a letter is mailed to the parents informing of them of the availability of proportionate share services.

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.

LEA Specific Information:

The LEA may report a crime committed by a student with a disability to the appropriate authorities. If the district reports a crime committed by a student with a disability, the district must ensure copies of the special education and disciplinary records are transmitted for consideration by the appropriate authorities to extent permitted under FERPA.

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:
 - o The length of each removal;
 - o The total amount of time the child has been removed; and
 - o 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.

LEA Specific Information:

In school suspension would not be considered a part of the days of removal as long as the student is:

- o Afforded the opportunity to continue to participate in the general curriculum
- o Continue to receive the services specified in the IEP

- o Continue to participate with non-disabled children to the extent possible

Campus administrators are responsible for collection documentation to prove the above conditions were met for students in in- school suspension. If the above conditions are not documented and/or met, the placement in in school suspension would count as a removal.

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:
 - o 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):
 - o Unless the LEA had conducted a FBA before the behavior that resulted in the change of placement occurred; and
 - o Implement a behavioral intervention plan (BIP) for the child; or
- If a BIP already has been developed:
 - o Review the BIP; and
 - o 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:
 - o Except as provided under special circumstances guidelines;
 - o 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:
 - o To enable the child to continue to participate in the general education curriculum, although in another setting;
 - o To enable the child to progress toward meeting the goals set out in the child's IEP; and
 - o 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:
 - o To enable the child to continue to participate in the general education curriculum, although in another setting; and/or

- o 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:
 - o 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:
 - o Controlled substance means a drug or other substance identified under 21 USC §812 schedules I, II, III, IV, or V;
 - o 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:
 - o 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:
 - o Name of the student;
 - o Name of the staff member(s) administering the restraint;

- o Date of the restraint and the time the restraint began and ended;
- o Location of the restraint;
- o Nature of the restraint;
- o A description of the activity in which the student was engaged immediately preceding the use of restraint;
- o The behavior that prompted the restraint;
- o The efforts made to de-escalate the situation and alternatives to restraint that were attempted; and
- o Observation of the student at the end of the restraint;
- o Information documenting parent contact and notification; and
- o One of the following:
 - if the student has a behavior improvement/intervention plan, whether the behavior plan may need to be revised as a result of the behavior that led to the restraint and, if so, identification of the staff member responsible for scheduling an ARD committee meeting to discuss any potential revisions; or
 - if the student does not have a behavior improvement/intervention plan, information on the procedure for the student's parent to request an ARD committee meeting to discuss the possibility of conducting a functional behavioral assessment of the student and developing a plan for the student.

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 and/or BIP. If a student has a BIP, the district must document each use of time-out prompted by a behavior of the student specified in the student's BIP, including a description of the behavior that prompted the time-out. 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:
 - o The location of the evaluation; and
 - o 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.

LEA Specific Information:

Upon receipt of a request for an IEE, the Director of Special Education in consultation with district staff makes the determination whether or not to provide an IEE at district expense.

If the district agrees to provide an IEE at district expense, the following will be used to set the fee

- The district will pay a fee for the IEE which allows the parent to choose from among qualified professionals in the area.
- The district will not pay unreasonable excessive fees. An unreasonably excessive fee is one which is 35% above the Medicaid rate for the specific type of evaluation being conducted. If no Medicaid rate exists for a particular type of evaluation, the rate for the most similar Medicaid evaluation will apply. A list of approved maximum rates is available upon request.
- Parents will be allowed the opportunity to demonstrate that unique circumstances justify an IEE that does not fall within the district's criteria.
- When service providers have a sliding scale fee based on parent income, the district will pay the amount charged to the parent.
- Travel costs for the evaluator and/or parents will not exceed the district rates for travel.

The following criteria must be met in selecting an evaluator:

- The independent evaluator will have the same qualifications required for district evaluation personnel (e.g. Licensed Specialist in School Psychology for a psychological evaluation, etc.)
- The independent evaluator shall have access to the student's education records upon request by the independent evaluator. The independent evaluator may meet with the district staff to gather information about a student as part of the evaluation upon request by the independent evaluator.

- The independent evaluator shall follow federal and state evaluation regulations and rules in conducting the evaluation and making recommendations regarding eligibility for special education services.
- The independent evaluator must be located within a 100 mile radius of the district.
- The independent evaluator must provide information to the district in the same timely manner as required to district personnel. The independent evaluator must provide an original typed and signed report to the district within 60 calendar days from the date the contract is executed with the independent evaluator and at least five school days prior to an ARD committee meeting scheduled to review the report. The report must include an original signature and title of all personnel involved in the evaluation. The report must comply with all requirements of state and federal regulations. Payment will not be made until after the district has received a signed written report from the independent evaluator.
- A copy of test protocols used by the independent evaluator must be provided to the district to be maintained in the student's records for the period of time in which educational decisions may be based on the findings of the IEE. Payment will be not made until the district has received the protocols from the independent evaluator.

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;

- o The number and percentage of children with disabilities who are subject to long-term suspensions or expulsions; and
 - o 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

Beginning with the 2016-2017 school year, schools and teachers will only need to meet state requirements for certification. The federal term of “highly qualified teacher status” will no longer apply. It is important to note that all state certification requirements adopted in State Board for Educator Certification rule remain in place.

An individual who is providing core content instruction in a special education classroom setting, must have special education certificate and a valid certificate that matches the subject and grade level of the assignment is also required, or the individual must demonstrate competency through the state's 2010 and 2011 high objective uniform State standard of evaluation for elementary and secondary special education teachers.

Core Content 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.

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

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.

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:
 - o 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:
 - o 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:
 - o Special education instructional or related service personnel who have the necessary skills and knowledge;
 - o Physical education teachers;
 - o Occupational therapists;
 - o Physical therapists; or

- o 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

- o 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).

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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.

Records related to SHARS reimbursement must be maintained for 7 years.

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.

LEA Specific Information:

The official special education record is considered to be student's eligibility folder maintained at the special education department.

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:
 - o The disclosure is initiated by the parent or eligible student; or
 - o 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:

- o The Comptroller General of the United States;
- o The Attorney General of the United States;

- o The United States Secretary of Education; or
- o 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;

- o 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;
- o Requires the organization to conduct the study in a manner that does not permit personal identification or parents and students, as defined in the part, by anyone other than representatives of the organization with legitimate interests; or
- o 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:
 - o Pursuant to court orders, lawfully issued subpoenas, or litigation as otherwise defined in the When Consent is Not Required to Disclose Information guidelines;
 - o In compliance with the Disclosure of Directory Information guidelines; or
 - o 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:
 - o The disclosures meet the requirements of When Consent is not Required to Disclose Information guidelines; and
 - o The educational agency or institution has complied with the requirements of the Record of Access guidelines.

