TEXAS LEADERSHIP

public schools

TEXAS LEADERSHIP SPECIAL EDUCATION OPERATING PROCEDURES

1.0 CHILD FIND

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

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

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

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

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

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

1.7 ***What about students who transfer?***

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

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

1.1 CHILD FIND.

Texas Leadership Public Schools (Texas Leadership or "the District") has an obligation to identify, locate and evaluate each child, age 5 and in kindergarten, to age 21 inclusive, attending Texas Leadership who has a disability or is suspected of having a disability, regardless of the severity of the disability, and who is in need of special education and related services. This *Child Find* obligation—mandated by the Individuals with Disabilities Education Improvement Act (IDEIA or, more commonly, IDEA) and Texas special education law—extends to all children with disabilities, including those who are homeless, highly mobile, migrants, in foster care, homeschooled, court-involved or attending private schools within the jurisdiction of the District.

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

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

The District's *Child Find* notice is included in both English and Spanish in the District's Student Code of Conduct or Parent Student Handbook which is updated annually. The District's *Child Find* notice is available to the public and to parents in both English and Spanish on the District's website. Together with the District's annual *Child Find* notice, the District includes information indicating where members of the Texas Leadership community can access the District's processes and procedures for initiating a referral for special education services eligibility evaluation.[3] The District also offers annual training to teachers and staff regarding the District's responsibility to actively identify and appropriately refer for evaluation students suspected of being in need of special education and related services, consistent with these *Special Education Operating Procedures* ("Operating Procedures").]

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

Prior to referral for a full individual and initial evaluation, students experiencing difficulty in the general classroom should be considered for response to evidence-based intervention and other academic or behavior support services. If the student continues to experience difficulty in the general classroom after the provision of interventions, District personnel will refer the student for a full individual and initial evaluation. Notwithstanding this provision, these general education or response to intervention strategies will not be used to delay or deny the provision of an evaluation.[1]

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

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

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

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

- IDEA does not prohibit a local campus within the District from **"screening"** a student to collect data that may be considered when determining whether the student is suspected of having a disability. Parental consent is not required before a campus-based committee reviews existing data as part of the special education referral process. Likewise, parental permission is not required before administering screenings or other assessments that are administered to all students generally without the requirement of parental consent. Written notice will be provided to parents of the scheduled screening or assessment; however, a campus will not use screening procedures to delay or deny the provision of a full individual and initial evaluation. [2]

- Students suspected of having a disability under Section 504 should be referred for an evaluation by a **Campus Section 504 Committee** and, if needed, the development by that Committee of an accommodation plan under Section 504. These referrals should be directed to the student's Campus Section 504 Coordinator. If a student's Section 504 Committee determines that the student has a disability that may require specialized instruction to make progress in the general curriculum, or if the student continues to experience difficulty in the general education classroom even with the supports specified in a 504 accommodation plan, the Section 504 Committee should refer the student to the Director of Special Education or designee to determine whether a full individual and initial evaluation is appropriate under the circumstances.

- For students who transfer to the District from a residential facility or other private school, the campus administrator or designee should obtain written consent from the student's parent or guardian to communicate with and request records from the residential facility or other private school and convene a meeting to discuss whether a referral for special education and related services is appropriate.

- Students suspected to have **dyslexia and related disorders** may be referred for an initial evaluation for special education and related services or to a Section 504 Committee. In accordance with TEA's *The Dyslexia Handbook* (2018 Update)[3], if the RtI committee suspects that a student has dyslexia or a related disorder but does not require specialized instruction, the student should be referred to the Section 504 Committee, which will assess the qualification of the student and whether the student may receive standard protocol dyslexia instruction and accommodations. If the RtI and/or the 504 committee determines that data leads to the suspicion of dyslexia or a related disorder <u>and</u> that the student needs specially designed instruction as a result of

[2] *Letter to Mills* (OSEP 05/02/19).
[3] TEA's ***The Dyslexia Handbook* (2018 Update)** is available at **https://tea.texas.gov/academics/dyslexia/.**

dyslexia or a related disorder, the student should be referred to special education for a potential full individual and initial evaluation, if appropriate.

1.3 Who is eligible for the district's program of special education and related services?

The District provides special education and related services to eligible students ages 5 and in kindergarten through 21 who reside within the District. To be eligible for the District's program of special education and related services, a student must (a) have one or more of the thirteen qualifying disabilities listed below and (b) need special education and related services—*Specially Designed Instruction* (SDI)—because of the disability. A free appropriate public education is also available to children with visual or auditory impairments residing within the District from age 5 and in kindergarten through age 21.

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

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

The general curriculum and educational standards that "apply to all children" in Texas Leadership are the **Texas Essential Knowledge and Skills (TEKS)** as well as the District's Policy. The state-wide assessments that

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

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

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

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

Children between the ages of 3-5 who are evaluated as having a potential intellectual disability, an emotional disturbance, a specific learning disability or autism may be described as "noncategorical early childhood" for the purposes of special education eligibility.[17] If a student enters kindergarten with "noncategorical early childhood" from a previous school, the student will be re-evaluated by their 6th birthday to determine if they meet eligibility criteria in one or more of the above areas.
Consideration of eligibility for special education and related services begins with a referral for a special education evaluation—a full individual and initial evaluation.

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

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

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

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

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

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

If a parent, legal guardian or adult student verbally requests a special education evaluation, the District staff who received the verbal request should report the request to campus principal and/or diagnostician or the aforementioned designated staff for the student's home campus. The assessment personal or designated staff should contact the requestor either by telephone or via email to gather more information about the request.

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

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

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

- **Within 15 school days of the Director of Special Education or administrative employee's receipt of the written request for an initial special education evaluation,** a licensed specialist in school psychology (LSSP), an educational diagnostician, or other appropriately certified or licensed practitioner with experience or training in the area of the suspected disabilities designated by the district may, as appropriate—

    - Review the records and performance data of the student in order to determine if there is sufficient evidence to suspect a disability. Information reviewed shall include, but is not limited to, all individual and group standardized assessments, *including evaluations provided by the parent or guardian completed privately*; standards of learning test scores; school enrollment history; attendance records; student work samples; and teacher observational information.

    - Consult with the student's general education teachers and other campus staff familiar with the student to review the general education supports and services, curricular modifications, instructional methodologies or evidence- based classroom accommodations or interventions that have been used with the student prior to referral, including the use of any **Multi-Tiered Systems of Support (MTSS)**, **such as** *Response to Intervention* (RtI), and other evidence-based general education interventions, tutorial, remedial, compensatory and other academic or behavior support services.

    - Contact the parent, legal guardian or adult student to provide an overview of the District's special education process and identify the date by which

informed written consent for the evaluation may be obtained (i.e., no later than 15 school days after receiving the written request for an initial evaluation).

- **No later than 15 school days after the Director of Special Education or administrative employee's receipt of the written request for an initial special education evaluation,** the district shall—
    - Ensure the District provides the parent(s), legal guardian and/or adult student with a copy of TEA's most recent ***Notice of Procedural Safeguards***.
        - A parent, legal guardian or adult student may choose to receive the ***Notice of Procedural Safeguards***, as well as the Prior Written Notice discussed below, by email, if the District makes that option available. If the parent or legal guardian does not affirmatively elect to receive the aforementioned notices by email, the District will mail or hand-deliver the notice(s) and document the method of delivery.
    - Provide Prior Written Notice of the District's proposal to conduct a full individual and initial evaluation (*Notice of Proposed Evaluation*) and an opportunity for the parent, legal guardian or adult student to give informed written consent for the evaluation, *if there is evidence of a suspected disability and, as a result of the suspected disability, a suspicion that the student may require specially designed instruction based on the information obtained during the 15-school day period described above*.
        - Prior Written Notice. The District's *Notice of Proposed Evaluation* shall describe any evaluation procedures that the District proposes to conduct.
        - Informed Written Consent. The District shall document that the parent, legal guardian or adult student has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, and the mode of communication. The District shall also document that the parent, legal guardian or adult student acknowledged understanding and agreeing in writing to the carrying out of the activity for which his or her consent is sought (e.g., a full individual and initial evaluation). The consent will

describe the activity and indicate which educational records, if any, will be released and to whom those records will be released.

- Notice and Consent by Email. The District may provide prior written notice via email if the District offers and the parent elects to receive the notice via email. The District may also obtain a parent's or a guardian's informed written consent for an evaluation by using a record and signature in electronic form that identifies and authenticates the person or guardian as the source of the consent and indicates the parent's or guardian's approval of the information contained in the electronic signature.

- If the parent, legal guardian or adult student does not provide consent for the initial special education evaluation, the District is relieved of its *Child Find* duty and its obligation to provide the student with a free appropriate public education pursuant to IDEA.[30] However, the District reserves the right in its sole discretion to file a request for a special education due process hearing to override a lack of parental consent for such evaluation. Designated staff should provide the parent, legal guardian or adult student with a ready, willing, and able letter regarding the District's intent to complete the evaluation with parental consent, together with prior written notice (*Notice of Proposed Evaluation)* documenting the District's offer to evaluate and the basis for the offer to evaluate and providing the parent or guardian with a copy of **TEA's *Procedural Safeguards Notice*.**

- Provide the parent, legal guardian, or adult student with prior written notice of the District's decision not to conduct an evaluation, *if there is no evidence of a suspected disability or a suspicion that the student may require special education and related services*.

  - If appropriate, the student may be referred to the District's Section 504 Coordinator or local campus designee for a potential Section 504 evaluation.

- Prior Written Notice. The diagnostician and/or other designated assessment staff will prepare the Prior Written Notice to include an explanation of why the District refuses to conduct an initial evaluation as well as a description of the information (assessments, records, reports or observations) that the District used as a basis for its refusal to evaluate. The District will provide this prior written notice by means reasonably designed to ensure that it is received by the parent, legal guardian or adult student, and document the fact that the notice was sent. This notice will be provided in a language that is understandable to the general public and also in the native language of the parent, unless it is clearly not feasible to do so.

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

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

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

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

The parent, legal guardian or teacher of a resident student who is parentally placed in private school or home instructed may refer a student suspected of having a disability and in need of special education and related services. Texas Leadership is a public charter school. However, the responsibility for identifying, locating and evaluating those students who reside within the jurisdiction of a public school district, but who are parentally placed in private schools or homeschooled, will be referred to their home district. Texas Leadership will assist by answering questions about the process and steps to follow to request a referral for a special education evaluation.

1.8 What about students who transfer?

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

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

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

- the District adopts the student's IEP from the previous school district, or

- the District develops, adopts and implements a new IEP.

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

- conducts a new full and individual evaluation, if the designated assessment personnel determine that a new evaluation is necessary; and

- develops, adopts and implements a new IEP, if appropriate

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

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

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