Sec. 1. IDEA EVALUATIONS AND REEVALUATIONS

All evaluations and eligibility determinations shall be made in accordance with the Individuals with Disabilities Education Act ("IDEA"), the Texas Education Code, and their implementing regulations.

Sec. 2. FULL AND INDIVIDUAL EVALUATION (FIE)

Raul Yzaguirre Schools for Success ("RYSS") shall ensure that upon completion of the administration of such tests and other evaluation materials administered according to the evaluation procedures of the IDEA and preparation of the written report, the admission, review and dismissal ("ARD") committee determines if the student is a student with a disability under state and federal standards.

RYSS shall conduct a full and individual initial evaluation ("FIE") prior to providing special education and related services to any student. All students must be evaluated in accordance with the IDEA, the Texas Education Code, and their implementing regulations.

RYSS shall have procedures in place to ensure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of students with disabilities are selected and administered so as to not be racially, culturally, or gender discriminatory. Assessment and procedures shall be provided and administered in the student's native language or most proficient mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so.

34 CFR 300.301; Education Code 29.310.

All implementing assessment procedures must differentiate between language proficiency and handicapping condition. Additionally, placement procedures must ensure that placement in a bilingual education or English as a second language program is not refused solely because the student has a disability. *19 TAC 89.1230.*

No single procedure shall be the sole criterion for determining whether a student is a student with a disability or for determining an appropriate education program for a student with a disability. The evaluation must be sufficiently comprehensive to identify all of the student's special education and related services' needs. Each student must be evaluated in all suspected areas of disability. *34 CFR 300.301,300.304; Education Code 29.310.*

All assessments must be administered in accordance with the instructions provided and by a trained and knowledgeable person. *34 CFR 300.301, 300.304*.

© 2023 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

Sec. 3. TIMELINE

If a student's parent provides a written request for an evaluation to the school's director of special education services or to a district administrative employee, RYSS shall, within 15 school days, (1) provide the parent with prior written notice of its proposal to conduct an evaluation, a copy of the procedural safeguards, and an opportunity to give written consent for the evaluation, or (2) provide prior written notice and procedural safeguards if the school is denying the request for evaluation. *Education Code 29.004(c).*

A written FIE report must be completed not later than the 45th school day following the date on which RYSS receives written consent for the evaluation, signed by the student's parent. If the student is absent for more than three days in that time period, the timeline must be extended by the number of days the student was absent. *Education Code 29.004(a).*

This timeframe shall not apply if:

1. A student enrolls in the current school after the relevant time frame has begun and before the previous school made a determination as to whether the student has a disability, but only if the current school is making sufficient progress to ensure a prompt completion of the evaluation and the parent and current school agree to a specific time for completion of the evaluation; or
2. The parent repeatedly fails or refuses to produce the student for the evaluation.

34 CFR 300.301(d).

Following the completion of the FIE, the ARD committee must meet within 30 calendar days from the date of completion to review and determine eligibility. *Education Code 29.004.*

If the 30th day falls during the summer and school is not in session, the student's ARD committee has until the first day of classes in the fall to finalize decisions concerning the student's initial eligibility determination, individualized education program ("IEP"), and placement, unless the full individual and initial evaluation indicates that the student will need extended school year services during that summer.

If the student is an English language learner, the language proficiency assessment committee (LPAC) must also attend the meeting to determine services.

19 TAC 89.1050(c)(j)

If RYSS receives written consent for an FIE from a student's parent at least 35 but less than 45 school days before the last instructional day of the school year, the evaluation must be completed and the written report of the evaluation must be provided to the parent not later than June 30 of that year. The ARD committee must meet by the 15th school day of the following school year to consider the evaluation.

© 2023 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.
SLHA Schulman, Lopez, Hoffer & Adelstein, LLP

If RYSS receives written consent signed by a student's parent less than 35 school days before the last instructional day of the school year or if the school receives the written consent at least 35 but less than 45 school days before the last instructional day of the school year but the student is absent from school during that period on three or more days, the FIE must be completed not later than the 45th school day after receiving consent.

School days do not include days following the last instructional day of the spring term and before the first day of the fall term.

Education Code 29.004.

Sec. 4. SPECIFIC LEARNING DISABILITY EVALUATION

The Texas Education Agency cannot require RYSS to use the severe discrepancy between intellectual ability and achievement for determining whether a student has a specific learning disability. TEA must permit the use of a process based on the child's response to scientific, research-based intervention; and may permit the use of other alternative research-based procedures for determining whether a student has a specific learning disability. *34 CFR 300.307.*

The evaluation process for specific learning disability includes an observation of the child in the learning environment, including the regular classroom setting, to document academic performance and behavior in the areas of difficulty, and the evaluation must adhere to all applicable requirements set forth in the IDEA, Texas Education Code, and their implementing regulations. *34 CFR 300.310 (a), (c); 19 TAC 89.1040(c)(9).*

Sec. 5. FUNCTIONAL BEHAVIOR ASSESSMENT (FBA)

A functional behavior assessment ("FBA") may be necessary for a student whose behavior impedes their education. Prior to completing an FBA, RYSS shall get consent from the parent. *34 CFR 300.9.*

If an ARD committee determines a change of placement is necessary due to the student's behavior, it must conduct an FBA and implement a behavioral intervention plan ("BIP"). If an FBA was already completed, the ARD committee must review and update the BIP. *34 CFR 300.350(f).*

Sec. 6. REVIEW OF EXISTING EVALUATION DATA

A Review of Existing Evaluation Data ("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 committee members and other qualified professionals, as appropriate. The ARD committee members may conduct the review without a meeting.

The REED must include a review of the following:

- Evaluations and information provided by the parents of the student;

© 2023 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.
SLHA Schulman, Lopez, Hoffer & Adelstein, LLP

- 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 student's parents, the ARD committee members must identify what additional data, if any, are needed to determine:

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

RYSS shall administer any assessments or other evaluation measures needed to produce the data identified by the REED in accordance with applicable procedural requirements regarding notice and consent.

If additional data is not needed, the ARD committee must notify the parent of the determination decision and provide information about the parent's right to request additional assessments to determine student needs and eligibility.

34 CFR 300.305.

RYSS shall conduct a reevaluation of the student if the school determines that the educational or related service needs, including improved academic achievement and functional performance, of the child warrant a reevaluation or if the child's parent or teacher requests a reevaluation. A reevaluation may not occur more than once per year, unless agreed to by the school and the parent. A reevaluation must occur at least every three years, unless the school and parent agree the evaluation is unnecessary. *34 CFR 300.303.*

Sec. 7. CHANGE IN ELIGIBILITY

RYSS shall evaluate a student with a disability before determining a student is no longer eligible for special education and related services. An evaluation is not required if a student is no longer eligible due to graduation or exceeding the age eligibility in Texas. RYSS shall create a summary of performance and include recommendations on how to assist the student in meeting postsecondary goals. *34 CFR 300.305(e).*

© 2023 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.
SLHA Schulman, Lopez, Hoffer & Adelstein, LLP

Sec. 8. CONSIDERATION OF SERVICES PROVIDED IN REGULAR EDUCATION SETTING

To ensure that underachievement in the student 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 a full and individual evaluation, must consider:

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

34 CFR 300.309(b).

Sec. 9. COORDINATION OF EVALUATIONS WITH PRIOR AND SUBSEQUENT SCHOOLS

The school shall ensure that evaluations of students who transfer from one local education agency to another in the same academic year are coordinated with the student's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of evaluations. *20 U.S.C. 1414(b)(3)(D).*

Sec. 10. PSYCHOLOGICAL EXAMINATIONS AND TESTS

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 as part of the evaluation of the child's need for special education, RYSS shall provide to the child's parent:

1. The name and type of the examination or test; and
2. An explanation of how the examination or test will be used to develop an appropriate IEP for the child.

If RYSS determines that an additional examination or test is required for the evaluation of a child's need for special education, RYSS shall provide the information above to the parent regarding the additional examination or test and shall obtain additional consent for the examination of test.

Education Code 29.0041(a), (b).

If RYSS determines that an additional examination or test is required for the evaluation, RYSS shall provide the information required by Education Code 29.0041(a) and shall obtain parental consent. If a parent does not give consent within 20 calendar days after the School provides the information, the parent's consent is considered denied.

The time required for RYSS to provide information and seek consent may not be counted toward the timeframe for completion of an evaluation. *Education Code 29.0041.*

© 2023 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.
SLHA Schulman, Lopez, Hoffer & Adelstein, LLP

Sec. 11. EXTENSION OF TIMELINES

For a specific learning disability, the timelines for evaluation under this policy may be extended by mutual written agreement of the student's parents and the ARD committee. *34 CFR 300.309(c).*

Sec. 12. EVALUATION CONDUCTED PURSUANT TO A SPECIAL EDUCATION DUE PROCESS HEARING

A special education hearing officer in an impartial due process hearing brought under 20 U.S.C. §1415 may issue an order or decision that authorizes one or more evaluations of a student who is eligible for, or who is suspected as being eligible for, special education services. Such an order or decision authorizes the evaluation of the student without parental consent as if it were a court order for purposes of any State or federal law providing for consent by order of a court. *Education Code 29.016.*

Sec. 13. INDEPENDENT EDUCATIONAL EVALUATIONS

The parent of a student with a disability has the right to obtain an independent educational evaluation ("IEE") of the parent's child if the parent disagrees with the evaluation of the student that was obtained by RYSS.

If the parent requests an IEE, RYSS must provide the parent with information about where the parent may obtain an IEE and about RYSS's criteria that apply to IEE.

Sec. 14. DEFINITIONS

An IEE means an evaluation conducted by a qualified examiner who is not employed by the school responsible for the education of a student.

Public expense means that RYSS 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 Part B of IDEA, which allow each State to use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of Part B of IDEA.

34 CFR 300.502.

Sec. 15. RIGHT TO AN INDEPENDENT EVALUATION AT PUBLIC EXPENSE

The parent has the right to request an IEE of the parent's child at public expense if the parent disagrees with an evaluation of the student completed by RYSS.

If the parent requests an IEE, RYSS must respond to the parent by either:

© 2023 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.
SLHA Schulman, Lopez, Hoffer & Adelstein, LLP

1. without unnecessary delay, filing a due process complaint to request a hearing to show that its evaluation of the student is appropriate; or
2. providing an IEE at public expense, unless RYSS demonstrates in a due process hearing that the evaluation of the student that the parent obtained did not meet RYSS's criteria.

If RYSS requests a hearing and the final decision is that RYSS's evaluation of the student is appropriate, the parent still has the right to an IEE, but not at public expense.

If the parent requests an IEE of the student, RYSS may ask why the parent objects to the evaluation of the student obtained by RYSS; however, RYSS may not require an explanation and may not unreasonably delay either providing the IEE of the student at public expense or filing a due process complaint to request a due process hearing to defend RYSS's evaluation of the student.

The parent is entitled to only one IEE of the student at public expense each time RYSS conducts an evaluation of the student with which the parent disagrees.

34 CFR 300.502.

a) ***Parent-Initiated Evaluations***

If the parent obtains an IEE of the student at public expense or the parent shares with RYSS an evaluation of the student that the parent obtained at private expense:

1. RYSS must consider the results of the evaluation of the student, if it meets RYSS's criteria for IEE, in any decision made with respect to the provision of a free appropriate public education to the student; and
2. the parent or RYSS may present the evaluation as evidence at a due process hearing regarding the student.

34 CFR 300.502.

b) ***Requests for Evaluations by Hearing Officers***

If a hearing officer requests an IEE of the student as part of a due process hearing, the cost of the evaluation must be at public expense.

Sec. 16. CRITERIA FOR OBTAINING IEE AT PUBLIC EXPENSE

The criteria under which the IEE is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an IEE.

© 2023 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.
SLHA Schulman, Lopez, Hoffer & Adelstein, LLP

a) ***Location***

The evaluator conducting an IEE of a child with a disability at public expense must be located within a 100-mile radius of RYSS. This will allow the evaluator access to RYSS for observation of the student and access to the student's cumulative and special education eligibility folders.

b) ***Cost***

Parents are free to select whomever they choose to perform the IEE, so long as the examiner meets RYSS's criteria. RYSS will pay a fee for an IEE that allows a parent to choose from among qualified professionals in the area.

RYSS will not pay unreasonably excessive fees. An unreasonably excessive fee is one which is 20% above the prevailing fees in the area as established by the Medicaid/Medicare Service Provider Manual for the specific test being considered.
Parents will be offered the opportunity to demonstrate to their child's ARD committee that unique circumstances exist which justify an IEE that does not meet RYSS criteria outlined in this document.

When evaluators have a sliding scale fee based on parent income, RYSS will pay the amount charged to the parent if the evaluator meets RYSS criteria or RYSS has approved the IEE that does not meet RYSS criteria.

In the event a parent pursues an IEE independently or pursues an IEE provider that is not on RYSS independent evaluator list, RYSS will determine if the evaluator meets RYSS criteria prior to authorizing payment or reimbursement. If payment will be authorized, an original billing form and an original written report with original signature must be submitted to RYSS prior to payment.

RYSS will deny payment for an IEE conducted by an evaluator who does not meet RYSS criteria. RYSS will deny payment for an IEE that does not meet TEA criteria for the specific disability identified.

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.

Travel costs for evaluators will not exceed RYSS rates for travel as established by state guidelines.

A contract for an IEE between an evaluator and RYSS will not exceed one year. All terms will become void after the expiration date of one year.

c) ***Evaluator Criteria***

The evaluator conducting the IEE must meet RYSS criteria and possess comparable credentials to the examiner that conducted the evaluation that is in dispute.

© 2023 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.
SLHA Schulman, Lopez, Hoffer & Adelstein, LLP

Evaluators must possess current licensure/certification to conduct the evaluation and must provide copies of his or her license or certification with the evaluation, if not previously provided.

Evaluators must comply with all requirements specified in state and federal law, including those outlined in the professional board responsible for providing the license or certification.

Evaluators must meet the examiner qualifications for the tests administered as outlined by the test producer.

The evaluator will have access to the student's cumulative folder and special education folders in gathering information about the student.
The evaluator will have the ability to interview teachers and observe the student in the educational setting.
Prior to conducting the assessment, the evaluator agrees to submit to a national criminal history review and to provide any and all information necessary to secure the national criminal history review, including fingerprints and photographs, or other information required by Texas Education Code § 22.0834 concerning Contractor or Contractor's Subcontractors.

The evaluator agrees to conduct a thorough evaluation in the area(s) performed by RYSS with which the parent disagrees.

Copies of protocols must be provided to RYSS.

The report must comply with all federal and state requirements, including addressing the presence or absence of a disability condition as defined under the IDEA and the Texas Education Code.

The evaluation must be provided to RYSS upon completion.

Except for the criteria described above, RYSS may not impose conditions or timelines related to obtaining an IEE at public expense.

34 CFR 300.502(e).

© 2023 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.