

Aldine

Independent School District

Special Education Policies

2017 – 2018

Aldine Independent School District
Special Education
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**ALDINE ISD
SPECIAL EDUCATION POLICIES**

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I. INSTRUCTIONAL ARRANGEMENTS: CONTRACTS WITH OUTSIDE AGENCIES

A. STUDENTS WITH DISABILITIES

A district may contract with a public or private facility, institution, or agency inside or outside of Texas for the provision of services to students with disabilities. Each contract for residential placement must be approved by the Commissioner, who may approve a residential placement only after at least a programmatic evaluation of personnel qualifications, adequacy of physical plant and equipment, and curriculum content. The Commissioner may approve either the whole or a part of a facility or program. [TEC §29.008(a)]

II. SPECIAL PROGRAMS: SPECIAL EDUCATION STUDENTS

A. NONDISCRIMINATION

No qualified student with a disability will, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any district service, program, or activity. [42 USC 12132; 29 USC 794; 34 CFR §104.4(a)]

B. PROVISION OF SPECIAL EDUCATION

Eligible students with disabilities will enjoy the right to a free appropriate public education, which may include instruction in the regular classroom, instruction through special teaching, or instruction through approved contracts. Instruction will be supplemented by the provision of related services when appropriate. [TEC §29.003(a)]

C. LEAST RESTRICTIVE ENVIRONMENT

A district will ensure that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, will be educated with children who are nondisabled. Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment will occur only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. [20 USC 1412(5)(A); 20 USC 1413(a)(1); 34 CFR §300.114(a)(2)]

D. DEFINITIONS

"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 the functional capabilities of a student with a disability. [20 USC 1401(1); 34 CFR §300.5]

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"Assistive technology service" means any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device, as defined above. [20 USC 1401(2); 34 CFR §300.6]

"Extended school year (ESY) services" are special education and related services that are provided to a child with a disability beyond a district's normal school year, in accordance with the child's individualized education program, and at no cost to the parents. The services will meet TEA standards. [34 CFR §300.106(b); 19 TAC §89.1065]

"Free appropriate public education" means special education and related services that are provided at public expense, under public supervision and direction, and without charge and that must meet standards set out by TEA and include an appropriate preschool, elementary, or secondary school education, and be provided in conformity with the student's individualized education program (IEP). [20 USC 1401(9); 34 CFR §300.17 & §300.320]

Four factors indicate whether an individualized education program is reasonably calculated to provide a meaningful educational benefit:

1. It is individualized on the basis of the student's assessment and performance;
2. It is administered in the least restrictive environment;
3. The services are provided in a coordinated and collaborative manner by the key "stakeholders"; and
4. Positive academic and nonacademic benefits are demonstrated.

Cypress-Fairbanks Indep. Sch. Dist. v. Michael F., 118 F.3d 245 (5th Cir. 1997)

"Related services" means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services will be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education. The term also includes school health services, social work services in schools, and parent counseling and training. It includes the early identification and assessment of disabling conditions in children. In addition to the specific related services defined in federal regulations, related services include interpreting services for students who are deaf. Interpreting services include interpreting/transliterating receptively and expressively for persons who are deaf or hard of hearing. [20 USC 1401(26); 34 CFR §300.34; 19 TAC §89.1060]

"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. [20 USC 1401(29); 34 CFR §300.39]

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"Transition services" means a coordinated set of activities for a student, designed within a results-oriented process, that is focused on improving the academic and functional achievement of the student to facilitate movement from school to post-school activities, including postsecondary education, vocational training, integrated employment, including supported employment, continuing and adult education, adult services, independent living, or community participation. These activities must be based on the individual student's needs, taking into account the student's strengths, preferences and interests. They must also include instruction, related services, community experiences, development of employment and other post-school adult living objectives, and when appropriate, acquisition of daily living skills and provision of a functional vocational evaluation. [20 USC 1401(34); 34 CFR §300.43]

E. DISCIPLINE

All disciplinary actions regarding students with disabilities will be in accordance with federal requirements, Texas Education Code Chapter 37, and 19 TAC §89.1053. [19 TAC §89.1050(g)]

F. ELIGIBILITY FOLDER

A district will maintain an eligibility folder for each student in special education in addition to the student's cumulative record. The folder will 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. [19 TAC §89.1075(a)]

G. PERSONNEL ASSIGNED TO VISUALLY IMPAIRED

If a district provides special education services to students with visual impairments, it will have written procedures as required in Texas Education Code §30.002(c)(10). [19 TAC §89.1085(b)]

H. SHARED SERVICES ARRANGEMENTS

A district may enter into a written contract to jointly operate its special education program. The contract must be approved by the Commissioner. [TEC §29.007]

I. TRANSFER OF ASSISTIVE TECHNOLOGY DEVICES

TEA will develop and annually disseminate standards for a district's transfer of an assistive technology device when a student with a disability using the device changes the school of attendance in a district or ceases to attend school in a district that purchased the device, and the student's parents, or the student if the student has the legal capacity to enter into a contract, agrees to the transfer. The device may be transferred to:

1. The school or district in which the student enrolls;
2. A state agency; or

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3. The student's parents, or the student, if the student has the legal capacity to enter into a contract.

A transfer of an assistive technology device (ATD) will be in accordance with a transfer agreement which incorporates the standards described in Texas Education Code §30.0015(c), and which includes, specifically, the following:

1. 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.
2. The informed consent of the parent of the student with a disability for whom the ATD is being transferred must be obtained before the transfer of an ATD. The procedures employed by a district in obtaining such informed consent will be consistent with the procedures employed by the district to obtain parental consent under 34 CFR §300.300. If the student has the legal capacity to enter into a contract, the informed consent may be obtained from the student. Consistent with 34 CFR §300.300(c), informed parental or adult student consent need not be obtained if a district can demonstrate that it has taken reasonable measures to obtain that consent, and the student's parent or the adult student has failed to respond. To meet the reasonable measures requirement, a district must use procedures consistent with those described in 34 CFR §300.322(d).
3. If the transfer is a sale, then the sale of the ATD will be evidenced by a "Uniform Transfer Agreement" (UTA) which includes the following:
 - a. The names of the transferor and the transferee (which may be any individual or entity identified in Texas Education Code §30.0015[b]);
 - b. The date of the transfer;
 - c. A description of the ATD being transferred;
 - d. The terms of the transfer (including the transfer of warranties, to the extent applicable); and
 - e. The signatures of authorized representatives of both the transferor and the transferee.
4. TEA will annually disseminate to school districts the standards for a school district's transfer of an ATD. [*TEC §300.0015; 19 TAC §89.1056*]

III. EVALUATION

A. SPECIAL POPULATIONS

Members of special populations will be provided career and technology services in accordance with all applicable federal and state laws, regulations, and rules. [*19 TAC §75.1023 (a)*]

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B. DEFINITION

In this policy, a "member of a special population" includes:

1. An individual with a disability;
2. An individual from an economically disadvantaged family, including a foster child;
3. An individual preparing for nontraditional training and employment;
4. A single parent, including single pregnant women;
5. A displaced homemaker; and
6. An individual with other barriers to educational achievement, including an individual with limited English proficiency.

[20 USC 2302(29)]

C. STUDENTS WITH DISABILITIES

A student with a disability will be provided career technology services in accordance with all applicable federal law and regulations including the Individuals with Disabilities Education Act (IDEA) and its implementing regulations, state statutes, and rules of the SBOE and the Commissioner.

A student with a disability will be instructed in accordance with the student's individualized education program (IEP), in the least restrictive environment, as determined by the admission, review, and dismissal (ARD) committee. If a student with a disability is unable to receive a free appropriate public education (educational benefit) in a regular career and technology education program, using supplementary aids and services, the student may be served in separate programs designed to address the student's occupational/training needs, such as career and technology education for students with disabilities (CTED).

A student with a disability identified in accordance with IDEA is an eligible participant in career and technology education when the following requirements are met:

1. The ARD committee will include a representative from career technology education, preferably the teacher, when considering initial or continued placement of a student in career and technology education;
2. Planning for the student will be coordinated among career and technology education, special education, and state rehabilitation agencies and should include a coherent sequence of courses;
3. A district will monitor to determine if the instruction being provided students with disabilities in career and technology education classes is consistent with those students' IEPs;
4. A district will provide supplementary services that each student with a disability needs to successfully complete career and technology education, such as curriculum modification, equipment modification, classroom modification, supportive personnel, and instructional aids and devices;
5. A district will help fulfill the transitional service requirements of the IDEA Amendments of 2004 and implementing regulations, state statutes, and rules

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of the Commissioner for each student with a disability who is completing a coherent sequence of career and technology education courses.

6. When determining placement in a career and technology classroom, the ARD committee will consider a student's graduation plan, the content of the individual transition plan, the IEP, and classroom supports. Enrollment numbers should not create a harmful effect on student learning for a student with or without disabilities in accordance with the provisions in the IDEA Amendments of 2004 and its implementing regulations. [*19 TAC §75.1023(d)*]

IV. SPECIAL EDUCATION STUDENTS: IDENTIFICATION, EVALUATION, AND ELIGIBILITY

A. CHILD FIND

A district will ensure that all children residing within a district who have disabilities, regardless of the severity of their disabilities, including children with disabilities who are (a) homeless, (b) wards of the state and/or (c) attending private schools, and who are in need of special education and related services are identified, located, and evaluated. A district will have a practical method for determining which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services. This requirement applies to highly mobile children (including migrant children) and children who are suspected of being in need of special education but who are advancing from grade to grade. Children who have previously received special education and related services and whose parents subsequently revoke consent should not be treated any differently in the child find process than any other child, including a child who was determined eligible and whose parents refused to provide initial consent for services. [*20 USC 1412(a)(3) & 1413(a); 34 CFR §300.111(c)*]] (*Items in italics appear in the December 2009 34 CFR Part 300 Analysis of Comments and Changes*)

B. REFERRALS

Referral of students for a full and individual initial evaluation for possible special education services will be a part of a district's overall general education referral or screening system. Prior to referral, students experiencing difficulty in the general classroom should be considered for all support services available to all students, such as tutorial, remedial, compensatory, and other services. If the student continues to experience difficulty in the general classroom after the provision of interventions, district personnel must refer the student for a full and individual initial evaluation. This referral for a full and individual initial evaluation may be initiated by school personnel, the student's parents or legal guardian, or another person involved in the education or care of the student. The referral for a full and individual initial evaluation must be completed in accordance with TEC §29.004, not later than the 45th school day. [*19 TAC §89.1011*]

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C. NOTICE OF RIGHTS

Before a district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of a free appropriate education to a student, a district will provide written notice to the student's parent or guardian. [20 USC 1415(b)(3) & (4); 34 CFR §300.503(a)]

D. TESTS AND EVALUATION MATERIALS

A district will ensure that tests and other evaluation materials used to assess a child are selected and administered so as not to be discriminatory on a racial or cultural basis and are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so. Any standardized tests given to the child will have been validated for the specific purpose for which they are used, administered by trained and knowledgeable personnel, and administered in accordance with any instructions provided by the producer of the tests. In addition, a district will ensure that the child is assessed in all areas of suspected disability and that assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided. [20 USC 1414(b)(3); 34 CFR §300.304 (c)(1)]

E. INITIAL EVALUATION

Before initially providing special education and related services to a child with a disability, a district will conduct a full and individual initial evaluation. Before a district conducts an initial assessment, it will:

1. Give the child's parent prior written notice, which includes a full explanation of all procedural safeguards and describes any evaluation procedures a district proposes to conduct; and
2. Obtain parental consent for the evaluation.

Parental consent will not be construed as consent for placement. If the parents refuse consent for the evaluation, a district may continue to pursue an evaluation by utilizing mediation and due process procedures. If a parent revokes consent, that revocation is not retroactive (that is, it does not negate an action that has occurred after the consent was given and before the consent was revoked).

[20 USC 1414(a)(1)(D); 20 USC 1414 (b) & (c); 34 CFR §300.503, §300.300 & §300.9]

F. TESTING PROCEDURES

The initial evaluation will consist of procedures to determine whether a child is a child with a disability, as defined below at ELIGIBILITY, and to determine the educational needs of the child. In conducting the evaluation, a district will:

1. Use a variety of assessment tools and strategies to gather relevant functional and developmental 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

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the child's individualized education program (IEP), including information related to enabling the child to be involved in and progress in the general education curriculum or, for a preschool child, to participate in appropriate activities;

2. Not use any single procedure as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and
3. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. [20 USC 1414(a)(1)(C)]
4. Assessment tools and strategies provide relevant information that directly assists persons in determining the educational needs of the child. [34 CFR §300.15, §300.304(b) & §300.304(c)(6)]

G. TIME LINE

A written report of a full and individual initial evaluation will be completed not later than the 45th school day following the date on which the school district, in accordance with 20 USC Section 1414(a), as amended, receives written consent for the evaluation, signed by the child's parent or legal guardian, except that if a student has been absent from school during that period on three or more days, that period must be extended by a number of school days equal to the number of school days during that period on which the student has been absent; or for students under five years of age by September 1 of the school year and not enrolled in public school and for students enrolled in a private or home school setting, not later than the 45th school day following the date on which the school district receives written consent for the evaluation, signed by a student's parent or legal guardian.

If a school district receives written consent signed by a student's parent or legal guardian for a full individual and initial evaluation of a student 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 or legal guardian not later than June 30th of that year.

The student's admission, review, and dismissal committee shall meet not later than the 15th school day of the following school year to consider the evaluation. If a district receives 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, subsection (a)(1) applies to the date the written report of the full individual and initial evaluation is required.

Section (a)(2) "School day" does not include a day that falls after the last instructional day of the spring school term and before the first instructional day of the subsequent fall school term. The commissioner by rule may determine days during which year-round schools are recessed that, consistent with this subsection, are not considered to be school days.

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Section (a)(3) does not impair any rights of an infant or toddler with a disability who is receiving early intervention services in accordance with 20 USC Section 1431.

The evaluation shall be conducted using procedures that are appropriate for the student's most proficient method of communication.

If a parent or legal guardian makes a written request to a school district's director of special education services or to a district administrative employee for a full individual and initial evaluation of a student, the district shall, not later than the 15th school day after the date the district receives the request:

1. Provide an opportunity for the parent or legal guardian to give written consent for the evaluation; or
2. Refuse to provide the evaluation and provide the parent or legal guardian with notice of procedural safeguards under 20 USC Section 1415 (b).

[Added by Acts 1995, 74th Leg., ch 260, Sec 1, eff May 30, 1995. Amended by Acts 2001, 77th Leg, ch 767, Sec. 2 eff June 13, 2001; Acts 2003, 78th Leg, Ch 539, Sec 3 eeff Sept 1, 2003. Amended by: Acts 2013, 83rd Leg R.S. Ch 757 (SB 816), Sec 1 eff September 1, 2013]

[TEC §29.004(a)]

On request of a child's parent, before obtaining the parent's consent under 20 USC 1414 for the administration of any psychological examination or test to the child that included as part of the evaluation of the child's need for special education, a school district will 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 a district 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 district will provide the information described above to the child's parent regarding the additional examination or test and will obtain additional consent for the examination or test.

The time required for a district to provide information and seek consent under TEC §29.0041(b) may not be counted toward the 60 calendar days for completion of an evaluation under TEC §29.004. If a parent does not give consent under TEC §29.0041(b) within 20 calendar days after the date a district provided to the parent the information required, the parent's consent is considered denied.

[TEC §29.0041]

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H. REVIEW OF EVALUATION DATA

As part of an initial evaluation, and as part of any reevaluation, the ARD committee and other qualified professionals, as appropriate, will 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 teacher and related service providers' observations. On the basis of this review, and input from the child's parents, the ARD committee will identify what additional data, if any, are needed to determine:

1. Whether the child has a particular category of disability, or in the case of a reevaluation, whether the child continues to have such a disability;
2. The present levels of academic achievement and related developmental needs of the child;
3. 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; and
4. 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 child's IEP and to participate, as appropriate, in the general education curriculum.

The review may be conducted without a meeting. If the review determines that no additional data are needed, a district will so notify the parents of that determination, the reasons for it, and the parents' right to request an assessment to determine whether, for the purposes of receiving special education services, the child continues to be a child with a disability and to determine the child's educational needs.

[20 USC 1414(c)(1); 34 CFR §300.305]

I. ELIGIBILITY

To be eligible for special education services a student must have been determined to have one or more of the disabilities listed in federal regulations or in state law or both.
[19 TAC §89.1040(a)]

A student is eligible to participate in a school district's special education program if the student is between the ages of 3 and 21 inclusive with one or more disabilities (physical disability, mental retardation, emotional disturbance, learning disability, autism, speech or language impairment, traumatic brain injury, visual or auditory impairment, orthopedic impairments, a specific learning disability, deaf-blindness, multiple disabilities, or other health impairments) that prevent the student from being adequately or safely educated in the public schools without the provision of special services. A student with a visual or auditory impairment will be eligible to participate in a district's special education program from birth. Graduation with a regular high school diploma pursuant to 19 TAC §89.1070(b)(1)-(2) terminates a student's eligibility to receive services. An eligible student receiving special education services who is 21 years of age on September 1 of a school year will be eligible for services through the end of that school year or until graduation with a

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regular high school diploma, whichever comes first. [20 USC 1401(3); 34 CFR §300.8; 19 TAC §89.1035; TEC §29.003(b) & §30.002]

A child between the ages of three and five who is evaluated as having mental retardation, emotional disturbance, a specific learning disability, or autism may be described as noncategorical early childhood. [20 USC 1401(3) & (30); 34 CFR §300.8; 19 TAC §89.1040]

J. DETERMINATION OF ELIGIBILITY

Upon completion of tests and other evaluation materials, the determination of whether the child is eligible for special education will be made by the ARD committee and the parent. In making the determination, a child will not be determined to be a child with a disability if the determinant factor for the determination is lack of instruction in reading or math or limited English proficiency. A copy of the evaluation report and the documentation of determination of eligibility must be given to the parent. [20 USC 1414(b)(4) & (5); 34 CFR §300.306]

K. PUBLIC NOTICE

A district will develop a system to notify district residents with children ages three to five who are eligible for enrollment in a special education program of the availability of the program. [TEC §29.009]

L. REEVALUATIONS

A district will ensure that each child with a disability is reevaluated if conditions warrant or if the child's parent or teacher requests a reevaluation, but at least once every three years. Before conducting a reevaluation, a district will give the parent notice that describes any evaluation procedures a district proposes to conduct and will obtain written parental consent, except that such informed parental consent need not be obtained if a district can demonstrate that it had taken reasonable measures to obtain consent and the parent has failed to respond. [20 USC 1414(a)(2), (b) & (c); 34 CFR §300.303 & §300.300(c)]

M. CHANGE IN ELIGIBILITY

A district will evaluate a child with a disability before determining that the child is no longer a child with a disability. [20 USC 1414(c)(5); 34 CFR §300.305(e)]

N. INDEPENDENT EVALUATION AT PUBLIC EXPENSE

The parents of a child with a disability have a right to obtain an independent educational evaluation if they disagree with a district's evaluation. Upon request for an independent evaluation, a district will provide parents with information regarding where one can be obtained. Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that a district uses when it initiates an evaluation. If a parent requests an independent evaluation, a district will either ensure that an evaluation is performed at public

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expense or initiate a due process hearing to establish that a district's evaluation is appropriate. If a district initiates a hearing, and a district's evaluation is found to be appropriate, the parent still has a right to an independent evaluation, but not at public expense. [20 USC 1415(b)(1) & (d)(2); 34 CFR §502 (a), (b) & (e)]

O. INDEPENDENT EVALUATION AT PRIVATE EXPENSE

If the parent obtains an independent educational evaluation at private expense, the results of the evaluation will be considered by a district, if it meets district criteria, in any decision made with respect to providing a free appropriate public education to the child. [34 CFR §300.502(c)]

V. SPECIAL EDUCATION STUDENTS: INDIVIDUALIZED EDUCATION PROGRAM (IEP) AND ARDS

A. ARD COMMITTEE

A district will establish an admission, review, and dismissal (ARD) committee for each eligible student with a disability and for each student for whom a full and individual initial evaluation is conducted. The ARD committee will be the individualized education program (IEP) team defined in federal law and regulations, including, specifically, 34 CFR §300.321. A district will be responsible for all of the functions for which the IEP team is responsible under federal law and regulations and for which the ARD committee is responsible under state law. [20 USC 1414(d)(1)(B); 19 TAC §89.1050(a)]

B. MEETINGS

A district will initiate and conduct ARD committee meetings for the purpose of developing, reviewing, and revising the IEP of a child with a disability. The committee will review each child's IEP periodically, and, if appropriate, revise the IEP. A meeting must be held for this purpose at least once a year. A meeting does not include informal or unscheduled conversations involving district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provisions if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

[20 USC 1414(d)(4)(A); 34 CFR §300.501(b)(3) & §300.324(b)]

C. NEW STUDENTS

A school district shall comply with the following for a student who is newly enrolled in a school district.

1. If the student was in the process of being evaluated for special education eligibility in the student's previous school district, the student's current school district shall coordinate with the student's previous school district as necessary and as expeditiously as possible to

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ensure a prompt completion of the evaluation in accordance with 34 CFR, §300.301(d)(2) and (e) and §300.304(c)(5). The evaluation shall be completed not later than the 60th calendar day following the date on which the current school district receives written consent as required by the TEC, §29.004.

2. When a student transfers within the state and the parents verify that the student was receiving special education services in the previous school district or the previous school district verifies in writing or by telephone that the student was receiving special education services, the school district must meet the requirements of 34 CFR, §300.323(a) and (e), regarding the provision of special education services. The timeline for completing the requirements outlined in 34 CFR, §300.323(e)(1) or (2), shall be 30 school days from the date the student is verified as being a student eligible for special education services.

3. When a student transfers from another state and the parents verify that the student was receiving special education services in the previous school district or the previous school district verifies in writing or by telephone that the student was receiving special education services, the school district must meet the requirements of 34 CFR, §300.323(a) and (f), regarding the provision of special education services. The timeline for completing the requirements outlined in 34 CFR, §300.323(f)(1) and (2), shall be 30 school days from the date the student is verified as being a student eligible for special education services.

4. In accordance with TEC, §25.002, and 34 CFR, §300.323(g), the school district in which the student was previously enrolled shall furnish the new school district with a copy of the student's records, including the child's special education records, not later than the 30th calendar day after the student was enrolled in the new school district. The Family Educational Rights and Privacy Act (FERPA), 20 United States Code, §1232g, does not require the student's current and previous school districts to obtain parental consent before requesting or sending the student's special education records if the disclosure is conducted in accordance with 34 CFR, §99.31(a)(2) and §99.34.

D. REPORT

The written report of the ARD committee shall document the decisions of the committee with respect to issues discussed at the meeting. The report shall include the date, names, positions, and signatures of the members participating in each meeting in accordance with 34 CFR, §§300.321, 300.322, 300.324, and 300.325. The report shall also indicate each member's agreement or disagreement with the committee's decisions. In the event TEC, §29.005(d)(1), applies, the district shall provide a written or audio-taped copy of the student's IEP, as defined in 34 CFR, §300.324 and §300.320. [TEC 29005(d)(1)]

If the child's parent is unable to speak English, the district shall provide the parent with a written or audiotaped copy of the child's individualized education program translated into Spanish if Spanish is the parent's native language;

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In the event TEC, §29.005(d)(2), applies, the district shall make a good faith effort to provide a written or audio-taped copy of the student's IEP, as defined in 34 CFR, §300.324 and §300.320. [TEC 29.005(d)(2)]

If the parent's native language is a language other Spanish, make a good faith effort to provide a parent with a written or audiotaped copy of the child's individualized education program translated into the parent's native language.

E. MEMBERSHIP

ARD committee membership.

(1) ARD committees shall include those persons identified in 34 CFR, §300.321(a), as follows:

(A) the parent(s) of the child;

(B) not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);

(C) not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;

(D) a representative of the school district who:

(i) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

(ii) is knowledgeable about the general education curriculum; and

(iii) is knowledgeable about the availability of resources of the school district;

(E) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in subparagraphs (B)-(F) of this paragraph;

(F) at the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate; and

(G) whenever appropriate, the child with a disability.

(2) The regular education teacher who serves as a member of a student's ARD committee should be a regular education teacher who is responsible for implementing a portion of the student's IEP.

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(3) The special education teacher or special education provider that participates in the ARD committee meeting in accordance with 34 CFR, §300.321(a)(3), must be appropriately certified or licensed as required by 34 CFR, §300.18 and §300.156.

(4) If the student is:

(A) a student with a suspected or documented visual impairment, the ARD committee shall include a teacher who is certified in the education of students with visual impairments;

(B) a student with a suspected or documented auditory impairment, the ARD committee shall include a teacher who is certified in the education of students with auditory impairments; or

(C) a student with suspected or documented deaf-blindness, the ARD committee shall include a teacher who is certified in the education of students with visual impairments and a teacher who is certified in the education of students with auditory impairments.

(5) An ARD committee member, including a member described in subsection (c)(4) of this section, is not required to attend an ARD committee meeting if the conditions of either 34 CFR, §300.321(e)(1), regarding attendance, or 34 CFR, §300.321(e)(2), regarding excusal, have been met.

F. TRANSITION PLANNING

If the purpose of the meeting is to consider transition services including post-secondary goals for a student, a district will invite:

1. the student. If the student does not attend, a district will take steps to ensure that the student's preferences and interests are considered.
2. a representative of any other agency that is likely to be responsible for providing or paying for transition services. If such a representative is invited but does not attend, a district will take other steps to obtain the participation of the other agency in the planning of any transition services.

[20 USC 1414(d)(1)(B)-(D); 34 CFR §300.344; 19 TAC §89.1050]

G. COLLABORATIVE PROCESS-TEN-DAY RECESS

All members of the ARD committee will have the opportunity to participate in a collaborative manner in developing the IEP. Decisions concerning the required elements of the IEP will be made by mutual agreement of the required members, if possible. The ARD committee may agree to an annual IEP or an IEP of shorter duration.

1. When mutual agreement about all required elements of the IEP is not achieved, the parent or adult student [see Procedural Requirements for more information on rights of adult students] who disagrees will be offered a single

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opportunity to have the committee recess for a period not to exceed ten school days. This recess is not required when:

- a. The student's presence on campus represents a danger of physical harm to the student or others;
 - b. The student has committed an expellable offense; or
 - c. The student has committed an offense that may lead to placement in a disciplinary alternative education program.
 - d. These requirements do not prohibit the members of the ARD committee from recessing an ARD committee meeting for reasons other than failure of the parents and a district from reaching mutual agreement about all required elements of an IEP.
2. During the recess, the committee members will consider alternatives, gather additional data, prepare further documentation, and/or obtain additional resource persons to enable the committee to reach mutual agreement.
 3. The date, time, and place for continuing the ARD committee meeting will be determined by mutual agreement prior to the recess.
 4. If after the ten-day recess, the ARD committee still cannot reach mutual agreement, a district will implement the IEP it has determined to be appropriate for the student.
 5. When mutual agreement is not reached, a written statement of the basis for the disagreement will be included in the IEP. The members who disagree will be offered the opportunity to write their own statements.
 6. When a district implements an IEP with which the parents or adult student disagree, it will provide prior written notice in compliance with the notice provisions described at the Procedural Requirements section.
 7. Parents will have the right to file a complaint, request mediation, or request a due process hearing at any point, when they disagree with ARD committee decisions.

[19 TAC §89.1050(h)]

H. FIRST-TIME REFERRALS

The ARD committee (see below) will make its decisions regarding students referred for a full and individual initial evaluation within 30 calendar days from the date of the completion of the written full and individual initial evaluation report. If the 30th day falls during the summer and school is not in session, the ARD committee will have until the first day of classes in the fall to finalize decisions concerning the initial eligibility determination, the IEP, and placement, unless the full and individual initial evaluation indicates the student will need extended school year (ESY) services during that summer. [34 CFR §300.323(c); 19 TAC 89.1050(d)]

See EXTENDED SCHOOL YEAR SERVICES.

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I. DISCIPLINE

For procedures involving discipline of students with disabilities see STUDENT DISCIPLINE: STUDENTS WITH DISABILITIES.

J. PARENTAL PARTICIPATION IN ARD COMMITTEE

A district will invite the parents and adult student to participate as members of the ARD committee by providing written notice, as described at the Procedural Requirements section. A district will take steps to ensure that one or both parents of a student with a disability are present at each ARD committee meeting or are afforded an opportunity to participate, including:

1. Notice of the purpose, time, and location of the meeting, who will be in attendance, and that persons with knowledge or special expertise may be invited by either the parent or the district;
2. Scheduling the meeting at a mutually agreed on time and place.

If the purpose of the meeting is to consider transition services, the notice must also indicate this purpose, indicate that a district will invite the student, and identify any other agency that will be invited to send a representative.

[20 USC 1414(d)(B)(i); 34 CFR §300.322(a) & (b); 19 TAC §89.1045(a)]

If neither parent can attend an ARD meeting, a district will use other methods to ensure parental participation, including individual or conference telephone calls. An ARD meeting may be conducted without a parent in attendance if a district is unable to convince the parents that they should attend, but a district will have a record of its attempts to arrange a mutually agreed on time and place, such as detailed records of telephone calls, correspondence, or visits made or attempted and the results of any of those actions. *[34 CFR §300.322(c) & (d)]*

K. MEETING AT PARENT'S REQUEST

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. A district must respond to the request by holding the meeting or requesting TEA's assistance through the mediation process. A district will 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. *[19 TAC §89.1045(b)]*

L. TEACHER INVOLVEMENT

The regular education teacher of a student with a disability, as a member of the ARD committee, will, to the extent appropriate, participate in the development, review, and revision of the student's IEP, including assisting in the determination of appropriate positive behavioral interventions and strategies and supplementary aids and services, program modifications, or supports for school personnel that will be provided for the student. *[34 CFR §300.324(a)(3)]*

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A district will have procedures to ensure that each teacher involved in a student's instruction has the opportunity to provide input and request assistance regarding the implementation of the student's IEP. These procedures will include a method for a student's regular or special education teachers to submit requests for further consideration of the student's IEP or its implementation. In response to this request, a district's procedures will include a method for the district to determine whether further consideration is necessary and whether this consideration will be informal or will require an ARD committee meeting. If a district determines that an ARD committee meeting is necessary, the student's current regular and special education teachers will have an opportunity to provide input.

A district will also ensure that each teacher who provides instruction to a student with disabilities receives relevant sections of the student's current IEP and that each teacher be informed of specific responsibilities related to implementing the IEP, such as goals and benchmarks, and of needed accommodations, modifications, and supports for the child. [34 CFR §323(d)(1) & (2); 19 TAC §89.1075(c)]

M. INDIVIDUALIZED EDUCATION PROGRAM (IEP)

The IEP developed by the ARD committee for each student with a disability will include:

1. A statement of the child's present levels of academic achievement and functional performance;
2. A statement of measurable annual goals, including academic and functional goals and, for students who take alternative assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
3. A description of how the child's progress toward the annual goals will be measured and when periodic reports on the child's progress will be provided;
4. A statement of the specific special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child and a statement of the program modifications or supports for school personnel that will be provided;
5. An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in extracurricular and nonacademic activities;
6. A statement of any individual appropriate accommodations in the administration of state or district wide assessments and, if the ARD committee determines the child must take an alternate assessment instead of a regular State or district wide assessment, a statement of why the child cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the child;
7. The projected date for initiation of services and modifications and the anticipated frequency, location, and duration of these services and modifications; and

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8. Beginning no later than the first IEP to be in effect when the student turns 16, or younger if determined appropriate by the ARD committee, and updated annually thereafter, the IEP must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills and the transition services (including courses of study) needed to assist the child in reaching those goals.

The ARD committee will also consider:

1. In the case of a child whose behavior impedes his or her learning or that of others, when appropriate, strategies, including positive behavioral interventions, and supports to address that behavior.
2. In the case of a child with limited English proficiency, the language needs of the child as those needs relate to the child's IEP.
3. For students who are blind or visually impaired, instruction in Braille and the use of Braille unless the ARD committee determines, after an evaluation of the child's reading and writing skills, that instruction in Braille is not appropriate for the child. The IEP will also include the elements required by TEC §30.002(e).
4. The communication needs of the child, and in the case of a child who is deaf or hard of hearing, the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode.
5. Whether the child requires assistive technology devices and services.
6. If the ARD committee determines that the student is in need of extended school year (ESY) services, goals and objectives for ESY services from the student's current IEP.

[20 USC 1414(d)(3)(B); 34 CFR §300.320(a)-(c), §300.324(a)(2) & §300.106(a); 19 TAC §89.1055(a)-(d) & (g)]

N. ACCELERATED READING INSTRUCTION PROGRAM

The admission, review, and dismissal committee of a kindergarten, first grade, or second grade student who participates in a district's special education program and who does not perform satisfactorily on a reading instrument will determine the manner in which the student will participate in an accelerated reading program. However, the accelerated reading instruction program may be implemented only if the Commissioner certifies that funds have been appropriated during a school year for administering the accelerated reading instruction program. [TEC §28.211(i) & (m)]

O. PROMOTION

The ARD committee of a student who does not perform satisfactorily on:

1. The third grade reading assessment instrument;
2. The fifth grade mathematics and reading assessment instrument; or
3. The eighth grade mathematics and reading assessment instrument

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will determine the manner in which the student will participate in an accelerated instructional program and whether the student will be promoted or retained.
[TEC §28.0211(i)]

For students with autism/pervasive developmental disorders, information about the following will be considered and when needed, will be addressed in the IEP:

1. Extended educational programming;
2. Daily schedules reflecting minimal unstructured time and active engagement in learning activities;
3. In-home and community-based training or viable alternatives that assist the student with acquisition of social/behavioral skills;
4. Positive behavior support strategies based on relevant information;
5. Futures planning for integrated living, work, community and educational environments that considers skills necessary to function in current and post-secondary environments, beginning no later than the date the student turns 16, or younger if determined appropriate by the ARD committee;
6. Parent/family training and support provided by qualified personnel with experience in Autism Spectrum Disorders (ASD);
7. Suitable staff-to-student ratio appropriate to identified activities and as needed to achieve social/behavioral progress based on the child's developmental and learning level;
8. Communication interventions that enhance effective communication across settings
9. Social skills supports and strategies based on social skills assessment/curriculum and provided across settings
10. Professional educator/staff support; and
11. Teaching strategies based on peer reviewed research-based practices for students with ASD.

If the ARD committee determines that the services are not needed in one or more of the items listed in 1-11 above, the IEP will include a statement reflecting that decision and the basis upon which the determination was made.

[20 USC 1414(d)(i); 34 CFR §300.320(a) & §300.324(a)(2); 19 TAC §89.1055(e) & (f)]

P. IEP TO PARENT

A district will provide a copy of the IEP to the parent at no cost to the parent.

[34 CFR §300.322(f)]

If the child's parent is unable to speak English, a district will:

1. Provide the parent with a written or audiotaped copy of the child's IEP translated into Spanish if Spanish is the parent's native language; or

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2. Make a good faith effort to provide the parent with a written or audiotaped copy of the child's IEP translated into the parent's native language, if that language is other than Spanish.

[34 CFR §322(e); 19 TAC §89.1050(e); TEC §29.005(d)]

Q. PLACEMENT DECISIONS

Before initial placement occurs, a district will obtain written consent as defined in 34 CFR §300.300(b) and 19 TAC 89.1050(e) [34 CFR §300.323(b)(2)]

See IDENTIFICATION EVALUATION AND ELIGIBILITY for details concerning parental consent.

R. EXTENDED SCHOOL YEAR (ESY) SERVICES

A district will ensure that extended school-year services are available as necessary to provide a student with a disability with a free appropriate public education.

The need for extended school year (ESY) services must be determined on an individual student basis by the ARD committee. In determining the need for and in providing ESY services, a district may not limit ESY services to particular categories of disability or unilaterally limit the type, amount, or duration of ESY services. The need for ESY services must be documented from formal and/or informal evaluations provided by a district or the parents. The documentation will demonstrate that in one or more critical areas addressed in the current IEP objectives, the student has exhibited or may reasonably be expected to exhibit severe or substantial regression that cannot be recouped within a reasonable period of time. "Severe or substantial regression" means that the student has been or will be unable to maintain one or more acquired critical skills because of the absence of ESY services.

If a district does not propose ESY services for discussion at the annual review of a student's IEP, the parent may request that the ARD committee discuss ESY services. If a student for whom ESY services was 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 will reconsider the current IEP if the student's loss of critical skills interferes with the implementation of the student's IEP.

[20 USC 1412(a)(1); 34 CFR §300.106; 19 TAC §89.1065]

S. INDIVIDUAL TRANSITION PLANNING

For each student with a disability beginning no later than the first IEP to be in effect when the student turns 16 (or younger, if determined appropriate by the ARD committee), and updated annually, the IEP will include appropriate measurable postsecondary goals based on age appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills and the transition services (including courses of study) needed to assist the student in reaching these goals. [20 USC 1414 (d)(1)(A); 34 CFR §300.320(b)]

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Transition planning will be initiated by a district, but transition services are the responsibility of other state agencies as well. Subject to revision by mutual agreement of the agencies, the following are participating agencies for purposes of transition services: Texas Education Agency, Texas Department of Human Services, Texas Commission for the Blind, Texas Department of Protective and Regulatory Services, Texas Department of Mental Health and Mental Retardation, Texas Employment Commission, and Texas Rehabilitation Commission.

The individual transition planning process will be collaborative and based on long- range goals. It will be based on current information regarding the student's knowledge, skills, capabilities, interests, and preferences.

[34 CFR §300.43; 19 TAC §89.1055; TEC §29.011]

T. INSTRUCTIONAL DAY

An instructional day commensurate with that of students who do not have disabilities will be available to students with disabilities. The ARD committee will determine the appropriate instructional setting and length of day for each student and specify these requirements in the student's IEP. [19 TAC 89.1075(d)]

U. PERSONNEL ASSIGNED TO VISUALLY IMPAIRED

If a district provides special education services to students with visual impairments, it will have written procedures as required in TEC §30.002(c)(10).

[19 TAC 89.1075(b)]

V. GRADUATION

Graduation with a regular high school diploma terminates a student's eligibility for special education services. In addition, as provided in TEC §42.003(a), graduation with a regular high school diploma terminates a student's entitlement to the benefits of the Foundation School Program. For students who receive a diploma according to 19 TAC §89.1070(c), the ARD committee will determine needed educational services upon the request of the student or parent to resume services, as long as the student meets the age requirements. *See Special Education Students: Identification, Evaluation and Eligibility.*

Graduation from high school with a regular diploma constitutes a change in placement that requires written prior notice to parents.

[20 USC 1412(a)(1)(B) & (C) & 1413(a); 34 CFR §300.102; 19 TAC §89.1070]

VI. SPECIAL EDUCATION STUDENTS: STUDENTS IN NONDISTRICT PLACEMENT

A. CHILDREN IN PRIVATE SCHOOLS

1. CHILD FIND

A district will ensure that all children attending private schools located within the district's attendance boundaries regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated, and that a practical method is developed and implemented to

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determine which children with disabilities are currently receiving needed special education and related services. The activities undertaken to carry out this responsibility for private-school children with disabilities must be comparable to activities undertaken for children with disabilities in public schools. [20 USC 1412(a)(3) & 1413(a); 34 CFR §300.131]

2. SERVICES

No 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.

A district will consult in a timely and meaningful way with appropriate representatives of private-school children with disabilities to decide which children will receive services, what services will be provided, how and where the services will be provided, and how the services provided will be evaluated. If a child with a disability is enrolled in a private school and will receive special education or related services from a district, a district will initiate and conduct ARD committee meetings to develop, review, and revise a services plan for the child and ensure that a representative of the private school attends that meeting. A district will make the final decisions with respect to eligible private-school children.

[20 USC 1412(a)(10) & 1413(a); 34 CFR §300.134 & §300.137; 19 TAC §1096(a)]

3. PRIVATE SCHOOL PERSONNEL

A district will give appropriate representatives of private-school children with disabilities a genuine opportunity to express their views regarding educational needs of private-school children with disabilities. However, the services provided to private-school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools.

[20 USC 1412(a)(10) & 1413(a); 34 CFR §300.138(a)(1) & (c)(1)]

4. UNILATERALLY ENROLLED STUDENTS

When a student with disabilities who has been placed by his or her parents directly in a private school or facility is referred to a district, a district will convene an ARD committee meeting to determine whether a district can offer to the student a free appropriate public education. If a district determines that it can, a district is not responsible for providing educational services to that student until the parents enroll the child in the public school full-time or request services under the dual enrollment rule. A district is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if a district made a free appropriate public education available to the child and the parents elected to place the child in the private school or facility. [19 TAC §89.1096(b)]

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5. EXTENT OF SERVICES

Amounts expended to provide special education services to private-school students will be equal to a proportionate amount of federal funds made available for eligible special education students educated within a district. For children ages 3 through 21, this will be an amount that is the same proportion of a district's federal special education funding as the number of private-school children with disabilities residing in a district is to the total number of children with disabilities in a district.

[20 USC 1412(a)(10), 1413(a); 34 CFR §300.133(a) & (b)]

B. DUAL ENROLLMENT

Parents of an eligible student age three or four will have the right to "dual enroll" their student in both the public school and the private school beginning on the student's third birthday and continuing until the end of the school year in which the student turns five, subject to the following:

1. The student's ARD committee will develop an individualized education program (IEP) designed to provide the student with a free appropriate public education (FAPE) in the least restrictive environment appropriate for the student.
2. From the IEP, the parent and a district will determine which special education and/or related services will be provided to the student and the location where those services will be provided, based on the requirements concerning placement in the least restrictive environment set forth in 34 CFR §300.114 and §300.120 and the policies and procedures of a district.
3. For students served under the provisions of dual enrollment, a district will be responsible for the employment and supervision of the personnel providing the service, providing the needed instructional materials, and maintaining pupil accounting records. Materials and services provided will be consistent with those provided for students enrolled only in the public school and will remain the property of a district.[19 TAC §89.1096(c)]

Children with disabilities who are enrolled by their parents in private elementary and secondary schools will be provided special education and related services in accordance with a services plan that describes the specific special education and related services that a district will provide. Such services may be provided on the premises of private, including parochial, schools to the extent consistent with law. [20 USC 1412(a)(10); 34 CFR §300.132(b) & §300.139(a)]

C. TRANSPORTATION

A district will provide special transportation with federal funds only when the ARD committee determines that the condition of the student warrants the service in order for the student to receive the special education and related services (if any) set forth in the IEP. [20 USC 1412(a)(10); 34 CFR §300.139(b); 19 TAC §89.1096(e)]

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D. COMPLAINTS

Complaints regarding the implementation of the components of the student's IEP that have been selected by the parent and a district under the dual enrollment provisions may be filed with TEA under the procedures in 34 CFR §300.151-§300.153. Additionally, parents may request mediation as outlined in 34 CFR §300.506. The procedures relating to due process hearings do not apply to complaints regarding the implementation of the components of the student's IEP that have been selected by the parent and a district. [20 USC 1412(a)(10); 34 CFR §300.136; 19 TAC §89.1096(f)]

E. DISTRICT-PLACED STUDENTS

If a district places children with disabilities in a private school or facility in accordance with an IEP, those children will be provided special education and related services at no cost to their parents. [20 USC 1412(a)(10) & 1413(a); 34 CFR §300.146; 19 TAC §89.1090]

F. CHARTER SCHOOL STUDENTS

A district will serve children with disabilities attending district charter schools in the same manner as it serves children with disabilities in its other schools and will provide federal special education funds to those schools in the same manner as it provides those funds to its other schools. [20 USC 1413(a)(5); 34 CFR §300.209]

G. RESIDENTIAL FACILITIES

A district having a residential facility that is licensed by appropriate state agencies and located within a district's boundaries must provide special education and related services to eligible students residing in the facility. If, after contacting the facility to offer services to eligible students with disabilities, a district determines that educational services are provided through a charter school, approved non-public school, or a facility operated private school, a district is not required to provide services. However, a district will annually contact the facility to offer services to eligible students with disabilities. [19 TAC §89.1001(c) & §89.1115]

H. CONTRACTS FOR RESIDENTIAL PLACEMENTS

A district may contract with a public or private facility, institution, or agency inside or outside of Texas for residential placement for students with disabilities. A district may contract only with facilities that are approved by the Commissioner. Contracts for residential placement must be approved by the Commissioner, either in whole or in part, after at least a programmatic evaluation of personnel qualifications, adequacy of physical plant and equipment, and curriculum content. Residential contracts will be negotiated on an individual student basis.

1. NOTICE TO TEA

A district will notify TEA when it intends to contract for residential placement.

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Costs of approved contracts for residential placement may be paid from a combination of federal, state, and local funds, according to TEC §29.008(b).

2. RESPONSIBILITY

If a district contracts for education services, rather than providing the services itself, it will oversee the implementation of the student's IEP and will annually reevaluate the appropriateness of the arrangement. An approved facility, institution, or agency with whom a district contracts will periodically report to a district on the services the student has received or will receive, as well as diagnostic or other evaluative information a district requires in order to fulfill its obligations. [TEC §29.008(d)]

A district will have the following responsibilities when making a residential placement:

1. Before placing a student with a disability in a residential facility, initiate and conduct a meeting to develop an IEP for the student in accordance with state and federal regulations.
2. List in each student's IEP the services a district is unable to provide and the facility is able to provide.
3. Make an annual on-site visit to verify that the facility can and will offer the services listed in the individual student's IEP and to ensure that the facility offers the student an appropriate educational program. The placement of more than one student may be considered in the same site-visit; however, the IEP of each student must be reviewed and a determination of appropriateness of placement and service must be made for each student.
4. Document in each student's IEP the appropriateness of the facility. General approval by TEA or a general screening by a regional education service center (RESC) is not sufficient.
5. For each student, the ARD committee will establish written criteria and estimated time frames for returning the student to a district.
6. For all contract students, a district will verify in the annual ARD review that:
 - a. The facility continues to meet minimum standards for health and safety.
 - b. Continued contracting is needed and the need is documented in the IEP.
 - c. The facility continues to offer an appropriate program for the student.

3. OUT-OF-STATE PLACEMENTS

If a district contracts for out-of-state residential placements, it will do so in accordance with the rules for in-state residential placement, except that the facility will be approved by the appropriate agency in the state in which the facility is located rather than by the Texas Commissioner of Education.

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4. IN-STATE TRANSFERS

When a student on a residential contract in one district moves to another district in Texas and the student is to continue on the contract, a district that negotiated the contract will be responsible for the residential contract for the remainder of the school year.

[TEC §29.008; 19 TAC §89.6]

I. SCHOOL FOR THE BLIND AND VISUALLY IMPAIRED AND SCHOOL FOR THE DEAF

For each of its students enrolled in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf, a district will share the cost of the student's education (excluding the summer program) in accordance with Texas Education Code §30.003. Prior to consideration of the student's educational placement for special education services, a district will provide each parent of a student with visual or auditory impairments the following written information regarding the Texas School for the Deaf or Texas School for the Blind and Visually Impaired:

1. The availability of programs offered.
2. The eligibility and admissions requirements.
3. Student's rights to admission and to appeal admission decisions.

[TEC §30.003 & §30.004; 19 TAC §89.62]

A district may request services through the Texas School for the Blind and Visually Impaired or the Texas School for the Deaf in accordance with 19 TAC §89.1085.
[19 TAC §89.1085]

J. STUDENTS IN CONTRACT PLACEMENTS

For each student, the ARD committee will establish written criteria and estimated time lines for returning contracted students to a district. [19 TAC §89.61(a)(4)]

K. CHILDREN WITH DISABILITIES IN ADULT PRISONS

The following requirements do not apply to children with disabilities who are convicted as adults under state law and incarcerated in adult prisons:

1. Federal requirements pertaining to participation of students with disabilities in general assessments;
2. Requirements concerning transition planning and transition services, if the children's eligibility will end, because of their age, before they will be released from prison.

If a child with a disability is convicted as an adult under state law and incarcerated in an adult prison, the child's ARD committee may modify the child's IEP or placement and need not consider the least restrictive environment requirements if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

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[20 USC 1414(d)(7); 34 CFR §300.324(d)]

VII. SPECIAL EDUCATION STUDENTS: PROCEDURAL REQUIREMENTS

A district will establish and maintain procedures designed to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education. These procedures will include:

A. OPPORTUNITIES FOR PARENTS

An opportunity for the parents of a child with a disability:

1. To examine all records relating to the child;
2. To participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to the child; and
3. To obtain an independent educational evaluation of the child.

[20 USC 1414(e) & 1415(b)(1) & (d)(2); 34 CFR §300.501 & §300.502]

B. ADULT STUDENTS

A student with a disability who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Chapter 31, Family Code, will have the same right to make educational decisions as a student without a disability, except that a district will provide any notice required by Chapter 29, Subchapter A of the Texas Education Code or 20 USC 1415 to both the student and the parents. All other rights accorded to parents under Chapter 29, Subchapter A of the Texas Education Code or 20 USC 1415 transfer to the student. [34 CFR §300.520; TEC §29.017]

In accordance with 34 CFR §300.320 and §300.520 and TEC §29.017, beginning at least one year before a student reaches 18 years of age, the student's IEP must include a statement that the student has been informed that, unless the student's parent or other individual has been granted guardianship of the student under the Probate Code, Chapter XIII, all rights granted to the parent under the IDEA, Part B, other than the right to receive any notice required under IDEA, Part B, will transfer to the student upon reaching age 18. After the student reaches the age of 18, except as provided below (incarcerated students), the school district will provide any notice required under IDEA, Part B, to both the adult student and the parent. [19 TAC §89.1049(a)]

In accordance with 34 CFR §300.520(a)(2) and TEC §29.017, all rights accorded to a parent under IDEA, Part B, including the right to receive any notice required by IDEA, Part B, will transfer to an 18-year-old student who is incarcerated in an adult or juvenile, state or local correctional institution, unless the student's parent or other individual has been granted guardianship of the student under the Probate Code, Chapter XIII. [19 TAC §89.1049(b)]

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In accordance with 34 CFR §3000.520(a)(3), a school district must notify in writing the adult student and parent of the transfer of parental rights at the time the student reaches the age of 18. This notification is separate and distinct from the requirement that the student's IEP include a statement relating to the transfer of parental rights beginning at least one year before the student reaches the age of 18. This notification is not required to contain the elements of notice referenced in 34 CFR §300.503, 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. [19 TAC §89.1049(c)]

A notice under IDEA, Part B that is required to be given to an adult student and parent does not create a right for the parent to consent to or participate in the proposal or refusal to which the notice relates. For example, a notice of an ARD committee meeting does not constitute invitation to, or create a right for, the parent to attend the meeting. However, in accordance with 34 CFR §300.321(a)(6), the adult student or the school district may invite individuals who have knowledge or special expertise regarding the student, including the parent. [19 TAC §89.1049(d)]

Nothing in 19 TAC §89.1049 prohibits a valid power of attorney from being executed by an individual who holds rights under IDEA, Part B. [19 TAC §89.1049(e)]

C. SURROGATE PARENT

Procedures to protect the rights of the child whenever the parents of the child cannot be identified, a district cannot locate the parents after reasonable efforts to do so, the child is a ward of the state, or the child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 USC 11434a(6)). These procedures will include assigning an individual to act as a surrogate for the parents. In the event parental rights have not been terminated, the parent is encouraged and invited to participate in the educational decisions for their child. This individual will not be an employee of TEA, a district, or any other agency that is involved in the education or care of the child. In addition, the individual chosen to act as a surrogate parent should have no interest that conflicts with the interest of the child he or she represents and should have knowledge and skills that ensure adequate representation of the child. [34 CFR §300.519; TEC §29.001(10)]

The term “parent” is defined as the follows:

1. a biological or adoptive, parent of the child
2. a foster parent, if (a) the child is a ward of the state; (b) the child has been placed with the foster parent for at least 60 days; (c) the foster parent agrees to participate in making educational decisions on the child’s behalf; (d) the foster parent completes a required training program; and (e) the foster parent has no interest that conflicts with the child’s interest [19 TAC §89.1047(b); TEC §29.015(b)]
3. a guardian (but not the state if the child is a ward of the state or a guardian ad litem)
4. an individual acting in the place of a natural 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

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5. a surrogate parent who has been appointed
[34 CFR §300.30]

TRAINING

An individual assigned to act as a surrogate parent must complete a training program in which the individual is provided with an explanation of the provisions of federal and state laws, rules, and regulations relating to:

1. The identification of a student with a disability;
2. The collection of evaluation and re-evaluation data relating to a student with a disability;
3. The admission, review, and dismissal (ARD) committee process;
4. The development of an individualized education program (IEP), including the consideration of transition services for a student who is at least 16 years of age;
5. The determination of least restrictive environment;
6. The implementation of an IEP;
7. The procedural rights and safeguards available under 34 CFR §§300.148, 300.151-300.153, 300.229, 300.300, 300.500-300.520, 300.530-300.537 and 300.610-300.627, relating to issues described in 34 CFR §300.504(c); and
8. 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 students with disabilities.
9. The requirement and commitment to visit the child's school, communicate with school staff regarding the academic progress of the child via teacher conferences, access ParentCONNECT and Aldine Parent Portal.

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

The individual assigned to act as a surrogate parent must complete the training program within 90 calendar days after the date of initial assignment as a surrogate parent. Once an individual has completed a training program conducted or provided by or through the Texas Department of Family and Protective Services (TDFPS), a school district, an education service center, or any entity that receives federal funds to provide IDEA training to parents, the individual will not be required by any school district to complete additional training in order to continue serving as the student's surrogate parent or to serve as the surrogate parent for other students with disabilities. School districts may provide ongoing or additional training to surrogate parents and/or parents; however, a district cannot deny an individual who has received the training from serving as a surrogate parent on the grounds that the individual has not been trained.

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A district will provide, or arrange for the provision of, the training program prior to assigning an individual to act as a surrogate parent but no later than 90 calendar days after assignment.

[19 TAC §89.1047(a); TEC §29.001(10)]

D. FOSTER PARENT AS SURROGATE

A foster parent may act as a parent of a child with a disability if he/she complies with the requirements described in **SURROGATE PARENT (#2)**, including the completion of the previously-described training program.

CONFLICT OF INTEREST

Each school district shall develop and implement procedures for conducting an analysis of whether a foster parent or potential surrogate parent has an interest that conflicts with the interests of his/her child. A foster parent in a home which is verified by the TDFPS or a child-placing agency will not be deemed to have a financial conflict of interest by virtue of serving as the foster parent in that home. These homes include, but are not limited to, basic, habilitative, primary medical, or therapeutic foster or foster group homes. In addition, issues concerning quality of care of the child do not constitute a conflict of interest. Concerns regarding quality of care of the child should be communicated, and may be statutorily required to be reported, to TSFPS.

If a district denies a foster parent the right to serve as a surrogate parent or parent, the district must provide the foster parent with written notice of such denial within seven calendar days after the date on which the decision is made. The written notice will:

1. Specify the reason(s) the foster parent is being denied the right to serve as the surrogate parent or parent (the notice must specifically explain the interests of the foster parent that conflict with the interests of his or her child); and
2. Inform the foster parent of his or her right to file a complaint with TEA in accordance with its complaint procedures.

[19 TAC §89.1047(b)-(d); TEC §29.015]

E. PRIOR WRITTEN NOTICE

Prior written notice to the parents of the child whenever a district proposes to initiate or change or refuses to initiate or change the identification, evaluation, or educational placement of the child, or the free appropriate public education of the child. The written notice to parents will be provided at least five school days before the proposed action is taken, unless the parents agree otherwise. [34 CFR §300.503(a); 19 TAC §89.1015]

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The notice to parents must be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. The notice must include:

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1. A description of the action proposed or refused by a district, an explanation of why the district proposes or refuses to take the action, and a description of any options the district considered and the reasons why those options were rejected;
2. A description of each evaluation procedure, test, record, or report a district uses as a basis for the proposal or refusal;
3. A description of any factors that are relevant to a district's proposal or refusal;
4. Sources for parents to contact to obtain assistance in understanding the provisions of the IDEA; and
5. A statement that the parents of a child with a disability have protection under the procedural safeguards of IDEA and, if the notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained. *20 USC 1415(c); 34 CFR §300.503(b)*

F. REVOCATION OF CONSENT

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

1. May not continue to provide special education and related services to the child and must provide prior written notice that informs parents of the educational services and supports that they are declining before ceasing the provision of special education and related services
2. May not use mediation or due process procedures in order to obtain agreement or a ruling that services may be provided to the child
3. Will not be considered in violation of the requirement to make FAPE available to the child because of failure to provide the child with further special education and related services and
4. Is not required to convene an ARD committee meeting to develop an IEP for the child for further provision of special education services.
5. If a child experiences academic or behavioral difficulties after a parent revokes consent, the parent may request an evaluation to determine if the child is eligible, at that time, for special education and related services.

[20 USC 1414(a)(1)(D); 34 CFR §300.300(b)(4); 34 CFR Part 300] (Items in italics appear in the December 2009 34 CFR Part 300 Analysis of Comments

G. COMPLAINT PROCEDURES

1. An opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child. *[20 USC 1415(b)(6); 34 CFR §300.507(a)(1)]*

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2. Procedures that require the parent of a child with a disability, or the attorney representing the child, to provide notice (which will remain confidential) in a complaint that includes:
 - a. The name and address of the child, and the name of the school the child attends;
 - b. In the case of a homeless child or youth, available contact information for the child and the name of the school the child is attending;
 - b. A description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to the problem; and
 - c. A proposed resolution of the problem to the extent known and available to the parents at the time.

[20 USC 1415 (b); 34 CFR §300.508(b)]

H. PROCEDURAL SAFEGUARDS NOTICE

A copy of the procedural safeguards must be given to the parents one time a school year.

A copy of the procedural safeguards must also be provided

1. Upon initial referral for evaluation;
2. Upon receipt of the first State complaint in a school year;
3. Upon receipt of the first due process complaint in a school year;
4. On the date a decision is made to make a removal that constitutes a change in placement due to a violation of a code of student conduct and
5. Upon request by a parent

CONTENTS

The procedural safeguards notice will include a full explanation of the procedural safeguards, written in the native language of the parents, unless it clearly is not feasible to do so, and written in an easily understandable manner.

The notice will include information relating to:

1. Independent educational evaluation;
2. Prior written notice;
3. Parental consent;
4. Access to educational records;
5. Opportunity to present and resolve complaints through the due process and state complaint processes;
6. The availability of mediation;
7. The child's placement during pendency of due process proceedings;
8. Procedures for students who are subject to placement in an interim alternative educational setting;
9. Requirements for unilateral placement by parents of children in private schools at public expense;
10. Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
11. Civil actions, including the time period in which to file those actions; and
12. Attorneys' fees

[20 USC 1415(d); 34 CFR §300.504; 34 CFR §300.530 (h)]

ALDINE ISD SPECIAL EDUCATION POLICIES

I. MEDIATION PROCESS

A district will ensure that procedures are established and implemented to allow parties to disputes arising from parental complaints relating to the identification, evaluation, placement or provision of a free appropriate public education to the child, to resolve those disputes through a mediation process which, at a minimum, will be available whenever a parent requests an impartial due process hearing or a hearing concerning a child's placement in an alternative educational setting.

[20 USC 1415(e); 34 CFR §300.506(a); 19 TAC §89.1150(c)]

Mediation procedures will ensure that the process:

1. Is voluntary on the part of the parties;
2. Is not used to deny or delay a parent's right to a due process hearing or to deny any other rights afforded under the Individuals with Disabilities Education Act; and
3. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

[20 USC 1415(e); 34 CFR §300.506(b)(1)]

J. WHEN NO MEDIATION PROCESS IS USED

A district may establish procedures to require parents who choose not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with a parent training and information center or community parent resource center, or an appropriate alternative dispute resolution entity. The impartial party would encourage the use, and explain the benefits, of the mediation process to parents.

[20 USC 1415(e); 34 CFR §300.506(b)(2)]

K. 'STAY PUT'

A violation of the Student Code of Conduct by a special education student will be determined by the presiding officer of the administrative discipline hearing. This officer will also determine the discipline placement of the student. If a dispute arises over the outcome of a Manifestation Determination Review or if the parent begins an initial referral to special education, the student will remain in the discipline setting determined by the presiding officer of the administrative discipline hearing pending the outcome of such actions or the end of the placement whichever comes first.

VIII. ACADEMIC ACHIEVEMENT: GRADUATION

A student may graduate and receive a diploma only if the student:

1. Successfully completes the curriculum requirements identified by the State Board of Education and has performed satisfactorily on the exit-level assessment instruments identified in TEC §39.025; or
2. Completes an individualized education program.

ALDINE ISD SPECIAL EDUCATION POLICIES

[TEC §28.025(c)]

A. DIPLOMA/TRANSCRIPT/CERTIFICATE OF COURSEWORK COMPLETION EXIT-LEVEL ASSESSMENT

Graduates of each high school are awarded the same type of diploma. The academic achievement record (transcript), rather than the diploma, records individual accomplishments, achievements, and courses completed and displays appropriate graduation seals. [19 TAC §74.11(a) & §74.41(a)]

B. GRADUATION OF SPECIAL EDUCATION STUDENTS

1.
 - a. The student has satisfactorily completed the state's or district's (whichever is greater) minimum curriculum and credit requirements for graduation (under the recommended or distinguished achievement high school programs) applicable to students in general education, including satisfactory performance on the exit-level assessment instrument; or
 - b. The student has satisfactorily completed the state's or district's (whichever is greater) minimum curriculum and credit requirements for graduation (under the minimum high school program) applicable to students in general education, including participation in required state assessments. The student's admission, review and dismissal (ARD) committee shall determine whether satisfactory performance on a required state assessment shall also be required for graduation. *TEC 39.027(a)(2)(B)*. [19 TAC §89.1070(b)]

2. COMPLETION OF IEP

A student receiving special education services may also graduate and receive a regular high school diploma when the student's ARD committee has determined that the student has successfully completed:

- a. The student no longer meets age eligibility requirements and has completed the requirements specified in the individualized education program (IEP);
- b. One of the following conditions, consistent with the student's IEP:
 1. Full-time employment, based on the student's abilities and local employment opportunities, in addition to sufficient self-help skills to enable the student to maintain the employment without direct and ongoing educational support of the local school district;
 2. Demonstrated mastery of specific employability skills and self-help skills which do not require direct ongoing educational support of the local school district; or
 3. Access to services which are not within the legal responsibility of public education, or employment or educational options for which the student has been prepared by the academic program;

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[19 TAC §89.1970(b)]

When considering a student's graduation under this provision, the student shall be provided with a summary of academic achievement and functional performance (SOP) as described in CFR §300.305(e)(3). This summary shall consider, as appropriate, the views of the parent and student and written recommendations from adult service agencies on how to assist the student in meeting postsecondary goals. An evaluation as required by 34 CFR §300.305 (3) (1), shall be included as part of the summary. [19 TAC §1070(c)]

Students who participate in graduation ceremonies but who are not graduating and who will remain in school to complete their education do not have to be evaluated. [19 TAC §89.1070(d)]

In addition, the ARD committee will determine needed educational services upon the request of the student or parent to resume services, as long as the student meets the age eligibility requirements. [19 TAC §89.1070(f)]

IX. TESTING PROGRAMS: STATE ASSESSMENT PROGRAM

A. STUDENTS WITH DISABILITIES

A student receiving special education services enrolled in grades 3-11 and who is receiving instruction in the essential knowledge and skills will take the assessment of academic skills unless the student's ARD committee determines that it is an inappropriate measure of the student's academic progress as outlined in the student's IEP. If the ARD committee determines that the assessment is an inappropriate measure of the student's academic progress, the student will take the alternate assessment of academic skills. Each testing accommodation will be documented in the student's IEP in accordance with federal law. [19 TAC §101.5(b)]

B. ALTERNATE ASSESSMENT

TEA will develop or adopt appropriate criterion-referenced assessment instruments to be administered to each student in a special education program who receives modified instruction in the essential knowledge and skills identified under Subchapter A, Chapter 29, for the assessed subject but for whom an assessment instrument adopted under TEC §39.023(a), even with allowable modifications, would not provide an appropriate measure of student achievement, as determined by the student's ARD committee.

The assessment instruments must assess essential knowledge and skills and growth in the subjects of reading, mathematics, and writing and will be administered on the same schedule as the assessment instruments administered to all other students. A student's ARD committee will determine whether any allowable modification is necessary in administering an assessment instrument [TEC §39.023(b)]

ALDINE ISD SPECIAL EDUCATION POLICIES

C. PERMISSIBLE ACCOMMODATIONS

Testing accommodations on the assessments administered are permitted for any student unless they would make a particular test invalid. Decisions regarding testing accommodations will take into consideration the needs of the student and the accommodations the student routinely receives in classroom instruction.

For a student receiving special education services, the ARD committee will determine the allowable accommodations necessary for the student to take the assessments and will document them in the student's IEP. Permissible testing accommodations will be described in the appropriate test administration materials. [19 TAC §101.29]

D. LEP STUDENTS IN SPECIAL EDUCATION

Decisions regarding the selection of assessments and appropriate accommodations for LEP students who receive special education services will be made by the ARD committee, in conjunction with the Language Proficiency Assessment Committee (LPAC).

An LEP student who receives special education services may be exempted from the English language proficiency assessments only if the ARD committee in conjunction with the LPAC determines that these tests cannot provide a meaningful measure of the student's annual growth in English language proficiency for reasons associated with the student's disability.

An LEP student who receives special education services and whose parent or guardian has declined the services required by Texas Education Code Chapter 29, Subchapter B, is not eligible for an exemption on the basis of limited English proficiency. [19 TAC §101.1009]

X. STUDENT DISCIPLINE: STUDENTS WITH DISABILITIES

A. STUDENTS WITH DISABILITIES UNDER SECTION 504

A student with a disability under Section 504 will not be removed from school for more than ten consecutive school days unless a district first determines that the misbehavior is not a manifestation of the student's disability. That determination may be made by the same group of people who make placement decisions.

The group must have available to it evaluation data that is recent enough to afford an understanding of the student's current behavior. At a minimum, the group will include persons knowledgeable about the student and the meaning of the evaluation data. If it is determined that the misconduct is not caused by the student's disability, the student may be excluded from school in the same manner as similarly situated nondisabled students. If it is determined that the misconduct is caused by the student's disability, a district must determine whether the student's current educational placement is appropriate. [34 CFR §104.35; 17 IDELR 609; 16 IDELR 491]

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A district may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any student with a disability under Section 504 who is currently engaging in the illegal use of drugs or in the use of alcohol to the same extent that disciplinary action would be taken against nondisabled students. Furthermore, the due process procedures afforded under Section 504 do not apply to such disciplinary action. [29 USC 794; 34 CFR §104.61]

B. CHANGE IN PLACEMENT

The placement of a student with a disability who receives special education services may be made only by a duly constituted admission, review, and dismissal (ARD) committee. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change of placement is appropriate for a student with a disability who violates a code of conduct. Any disciplinary action regarding a student with a disability who receives special education services that would constitute a change in placement under federal law may be taken only after the student's ARD committee conducts a manifestation determination review under 20 USC 1415(k)(1) and its subsequent amendments. Any disciplinary action regarding the student will be determined in accordance with federal law and regulations, including laws or regulations requiring the provision of:

1. Functional behavioral assessments;
2. Positive behavioral interventions, strategies, and supports;
3. Behavioral intervention plans; and
4. The manifestation determination review.

A student with a disability who receives special education services may not be placed in and disciplinary alternative education program (DAEP) solely for educational purposes. A teacher in a DAEP under Texas Education Code §37.008 who has a special education assignment must hold an appropriate certificate or permit or that assignment. [34 CFR §300.530(e); TEC §37.004]

A change in placement occurs if a child with a disability is:

1. Removed from the child's current educational placement for more than ten consecutive school days; or
2. Subjected to a series of removals that constitute a pattern because they cumulate to more than ten school days in a school year, and factors such as the similarity of the child's behavior to his/her behavior in previous incidents that resulted in the series of removals, the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another.

[34 CFR §300.536]

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C. REMOVALS OF LESS THAN TEN DAYS

To the extent removal would apply to students without disabilities, school personnel may order the removal of a student with a disability from the child's current placement:

1. For not more than ten consecutive school days for any violation of school rules; and
2. Additional removals of not more than ten consecutive school days in the same school year for separate incidents of misconduct, so long as those removals do not constitute a change in placement (defined above).

[20 USC 1415(k)(1); 34 CFR §300.530(b)]

SERVICES

A district is not required to provide services to a student with a disability during periods of removal if the student has not been removed from his or her current placement for ten school days or less in that school year. [34 CFR §300.530(d)]

D. MORE THAN TEN DAYS OF REMOVAL IN A SCHOOL YEAR

Either before or not later than ten business days after removing a child for more than ten consecutive school days or commencing a removal that constitutes a change in placement:

1. IF NOT DONE ALREADY, DEVELOP FBA AND BIP

If a district did not conduct a functional behavioral assessment (FBA) and implement a behavioral intervention plan (BIP) for the student before the behavior that resulted in the removal, the district will convene an ARD committee meeting to develop an assessment plan. As soon as practicable after developing the plan and completing the assessments, the ARD committee will meet to develop appropriate behavioral interventions to address that behavior and will implement those interventions. [34 CFR §300.530(d)]

2. IF BIP ALREADY IN PLACE, REVIEW IT

If the child already has a behavioral intervention plan, the ARD committee will meet to review the plan and its implementation, and modify the plan and its implementation, as necessary, to address the behavior. [34 CFR §300.530(f)]

3. SUBSEQUENT REMOVALS THAT ARE NOT A CHANGE IN PLACEMENT

If the student is subsequently removed and that removal is not a change in placement, the ARD committee does not have to meet to review the behavioral intervention plan unless one or more members of the committee believes that modifications are needed to the plan or the plan's implementation. If modification is deemed necessary, the committee will meet to modify the plan and its implementation. [34 CFR §300.520(d)]

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4. CONTINUED SERVICES ON ELEVENTH DAY

After a child with a disability has been removed from his or her current placement for more than ten school days in the same school year, during any subsequent days of removal, a district will provide the services necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set in the student's IEP. [20 USC 1415(k); 34 CFR §300.536(a) & §300.530(b)]

a. NO CHANGE IN PLACEMENT

If the removal does not constitute a change in placement, school personnel, in consultation with the student's special education teacher, determine the extent to which such services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP.

[34 CFR §300.530(d)]

E. WEAPONS / DRUG OFFENSES

School personnel may order a change in the placement of a student with a disability to an appropriate interim alternative educational setting, which must be determined by the ARD committee, for the same amount of time a student without a disability would be subject to discipline, but for not more than 45 school days if:

1. The student carries or possesses a weapon (*a device, instrument, material or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, but does not include a pocket knife with a blade of less than two and one-half inches in length*) to or at school, on school premises, or to or at a school function under the jurisdiction of a state or a school district; or
2. The student knowingly possesses or uses illegal drugs (*a controlled substance that does not include a 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 authority under that ACT or any other provision of federal law*) or sells or solicits the sale of a controlled substance (*a drug or other substance identified under schedules I, II, III, IV or V in section 202(c) of the Controlled Substances Act (21 USC 812[c])*) while at school or a school function under the jurisdiction of a state or a school district.
3. The student inflicts serious bodily injury (*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*) upon another person.

[20 USC 1415(k), 18 USC 930(g)(2), 18 USC 1365(3)(h); 34 CFR §§300.320(i)(4), 300.530(g), 300.330(i)(1)- (3)]

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F. REMOVAL BY A HEARING OFFICER

A hearing officer may order a change in placement of a student with a disability to an appropriate interim alternative educational setting for not more than 45 school days, if the hearing officer, in an expedited due process hearing:

1. Determines that a district has demonstrated beyond a preponderance of the evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or others;
2. Considers the appropriateness of the student's current placement;
3. Considers whether a district has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and
4. Determines that the interim alternative educational setting, which is proposed by school personnel who have consulted with the student's special education teacher, meets the criteria described below in **CRITERIA FOR THE ALTERNATIVE SETTING**.

[20 USC 1415(k)(3); 34 CFR §300.532(b)]

5. CRITERIA FOR THE ALTERNATIVE SETTING

Any interim alternative education setting in which a student with a disability is placed as a result of conduct described above at **WEAPONS/DRUG OFFENSES/SERIOUS BODILY INJURY** or that was ordered by a hearing officer will be determined by the ARD committee. The setting will be selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student's current IEP, that will enable the student to meet the goals set out in that IEP.

The setting will also include behavioral intervention services and modifications designed to address the behavior that caused the student to be placed in the alternative setting so that the behavior violation does not recur. [20 USC 1415(k)(1) & (2); 34 CFR §300.531]

G. REMOVAL THAT IS A CHANGE IN PLACEMENT

If a disciplinary action involving (a) a 45-day removal for weapons, drugs or serious bodily injury or (b) a change in placement is contemplated for a student with a disability who has engaged in other behavior that violated any rule or code of conduct of a district that applies to all children, the district will:

1. Not later than the date on which the decision to take the disciplinary action is made, notify the student's parents of the decision and of all procedural safeguards [see Special Education students: Procedural Requirements];
2. Conduct a functional behavioral assessment and develop a behavioral intervention plan, or if it has already done so, review the existing behavior intervention plan, as described above; and

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3. Immediately, if possible, but in no case later than ten school days after the date on which the decision to take that action is made, conduct a review of the relationship between the student's disability and the behavior subject to disciplinary action.

[34 CFR §300.536, §300.530(e) & (h); TEC §37.004(b)]

H. MANIFESTATION DETERMINATION REVIEW

The review will be conducted by the ARD committee and other qualified personnel. In carrying out the review, the ARD committee and other qualified personnel may determine that the student's behavior was not a manifestation of the student's disability only if the ARD committee and other qualified personnel:

1. First consider, in terms of the behavior subject to disciplinary action, all relevant information, including:
 - a. The student's IEP,
 - b. Any teacher observations, and
 - c. Any relevant information provide by the parents.
2. Then determine, in relationship to the behavior subject to the disciplinary action:
 - a. If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or
 - b. If the conduct in question was the direct result of the local education agency's failure to implement the IEP.

[20 USC 1415(k)(1); 34 CFR §300.530(e); TEC §37.004(b)]

I. JJAEP REPRESENTATIVE

Notwithstanding any other provision of Subchapter A, Chapter 37 of the Texas Education Code, in a county with a juvenile justice alternative education program (JJAEP) established under Texas Education Code §37.011, the expulsion of a student with a disability who receives special education services under Texas Education Code §37.007(b), (c), or (f), or §37.007(d) as a result of conduct that contains the elements of any offense listed in Texas Education Code §37.007(b)(3) against any employee or volunteer in retaliation for or as a result of the person's employment or association with a school district, must occur in accordance with these provisions. The district from which the student was expelled will, in accordance with applicable federal law, provide the administrator of the JJAEP or the administrator's designee with reasonable notice of the meeting of the student's ARD committee to discuss the student's expulsion. A representative of the JJAEP may participate in the meeting to the extent that the meeting relates to the student's placement in the program. In a county with a JJAEP, a school district will invite the administrator of the JJAEP or the administrator's designee to an ARD committee meeting convened to discuss a student's expulsion under Texas Education Code §37.004(e). The reasonable notice of the ARD committee meeting must be provided consistent with 34 CFR §300.322 and §300.503 and 19 TAC §89.1015, and a copy of the student's current IEP must be provided to the JJAEP administrator or designee with the notice. If the JJAEP representative is

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unable to attend the ARD committee meeting, the representative must be given the opportunity to participate in the meeting through alternative means including conference telephone calls.

[19 TAC §89.1052(b)]

J. CONDUCT NOT RELATED TO DISABILITY

If the result of the manifestation determination (described above) is that the student's behavior was not a manifestation of the student's disability, the disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner in which they would be applied to students without disabilities, except that a district will still provide services, as described below. [20 USC 1415(k)(1); 34 CFR §300.530(c)]

1. **CONTINUED SERVICES – CHANGE IN PLACEMENT** - If the student is suspended, expelled, or removed from his or her current placement for more than ten school days, and the removal constitutes a change in placement, the student's ARD committee will determine the services necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP. [20 USC 1412(a)(1), 1413(a)(1); 34 CFR §300.530(d)]

2. **JJAEP** - If, after placement of a student in a JJAEP, the administrator of the program or the administrator's designee has concerns that the student's educational or behavioral needs cannot be met in the program, the administrator or designee will immediately provide written notice of those concerns to the district from which the student was expelled. The student's ARD committee will meet to reconsider the placement of the student in the program. A district will, in accordance with applicable federal law, provide the administrator or designee with reasonable notice of the meeting, and a representative of the program may participate in the meeting to the extent that the meeting relates to the student's continued placement in the program. If the JJAEP representative is unable to attend the ARD committee meeting, the representative must be given the opportunity to participate in the meeting through alternative means including conference telephone calls. [19 TAC §89.1052(c)]

K. TRANSFER OF RECORDS

If a district initiates disciplinary procedures applicable to all students, the district will ensure that the student's special education and disciplinary records are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action. [20 USC 1413(i); 34 CFR §300.229; TEC §37.002]

L. PARENTAL APPEAL

A parent may request a hearing if the parent disagrees with:

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1. The determination that student's behavior was not a manifestation of the student's disability; or
2. Any decision regarding a disciplinary placement.

A district will arrange for an expedited hearing in any such case.
[20 USC 1615(k)(3); 34 CFR §300.532; 19 TAC §89.1191]

3. **PLACEMENT DURING APPEALS** - When a parent requests a hearing or an appeal to challenge the manifestation determination or the interim alternative setting related to discipline, the student will remain in the interim alternative educational setting (discipline setting) pending the decision of the hearing officer or until the time period for which the student is assigned to the alternative setting has expired, whichever occurs first, unless the parent and a district agree otherwise.

[20 USC 1415(k)(4); 34 CFR §300.533]

M. REPORTING CRIMES

Federal law does not prohibit a district from reporting a crime committed by a student with a disability to appropriate authorities. If a district reports a crime committed by a student with a disability, the district will ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities. A district may transmit records only to the extent permitted by the Family Educational Rights and Privacy Act (FERPA). [20 USC 1415(k)(6); 34 CFR §300.535]

N. STUDENTS NOT YET IDENTIFIED

A student who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated any rule or code of conduct of a district may assert any of the protections provided for in the Individuals with Disabilities Education Act (IDEA) if the district had knowledge that the student was a student with a disability before the behavior that precipitated that disciplinary action occurred.

A district will be deemed to have knowledge that a student is a student with a disability if:

1. The parent of the student has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to supervisory or administrative personnel or a teacher of the student that the student needed special education;
2. The parent had requested an evaluation for special education or,
3. The student's teacher, or other district personnel, has expressed concern about a pattern of behavior of the student to the special education director or to other supervisory personnel.

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In addition, a district would not be deemed to have knowledge if, as a result of receiving information specified in items 1-3, above, the district either:

1. Conducted an evaluation and determined that the student was not eligible for special education and related services; or
2. Determined that an evaluation was not necessary and provided the student's parents with results of its determination; or
3. The parent had refused an evaluation for special education or refused special education services

If a district has no knowledge (as described above), prior to taking disciplinary measures, that a student has a disability, the student may be subjected to the same disciplinary measures as are applied to students without disabilities who engaged in comparable behaviors. However, if a request is made for an evaluation during the time period in which the student is subjected to disciplinary measures, the evaluation will be conducted in an expedited manner. Pending the results of the evaluation, the student will remain in the educational placement determined by school authorities, which can include the discipline alternative setting, suspension or expulsion without educational services.

If the student is determined to be a student with a disability, taking into consideration information from the evaluation and information provided by the parents, a district will provide special education and related services as required by federal law.

[20 USC 1415(k)(5); 34 CFR §300.534]

O. USE OF CONFINEMENT, RESTRAINT, SECLUSION, AND TIME-OUT

A student with a disability who receives special education services under Texas Education Code Chapter 29, Subchapter A, may 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.

"Restraint" means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of a student's body.

"Seclusion" means a behavior management technique in which a student is confined in a locked box, locked closet, or locked room that:

1. Is designed solely to seclude a person; and
2. Contains less than 50 square feet of space.

"Time-out" means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting:

1. That is not locked; and

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2. From which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.

A district employee or volunteer or an independent contractor of a district may not place a student in seclusion.

Texas Education Code §37.0021 and any rules or procedures adopted under Texas Education Code §37.0021 do not apply to a peace officer, while performing law enforcement duties; juvenile probation, detention, or corrections personnel; or an educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of a school district.

The Commissioner by rule will adopt procedures for the use of restraint and time-out by a district employee or volunteer or an independent contractor of a district in the case of a student with a disability receiving special education services under Subchapter A, Chapter 29 of the Texas Education Code. A procedure adopted under this subsection must:

1. Be consistent with:
 - a. Professionally accepted practices and standards of student discipline and techniques for behavior management and
 - b. Relevant health and safety standards; and
2. Identify any discipline management practice or behavior management technique that requires a district employee or volunteer or an independent contractor of a district to be trained before using that practice or technique.

In the case of a conflict between a rule adopted by the Commissioner under these provisions and a rule adopted under Subchapter A, Chapter 29 of the Texas Education Code, the rule adopted under these provisions controls.

Texas Education Code §37.0021 does not prevent a student's locked, unattended confinement in an emergency situation while awaiting the arrival of law enforcement personnel if:

1. The student possesses a weapon; and
2. The confinement is necessary to prevent the student from causing bodily harm to the student or another person.

For these purposes, "weapon" includes any weapon described under Texas Education Code §37.007(a)(1).

[TEC §37.0021]

A school employee, volunteer, or independent contractor may use restraint only in an emergency and with the following limitations:

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1. Restraint will be limited to the use of such reasonable force as is necessary to address the emergency.
2. Restraint will be discontinued at the point at which the emergency no longer exists.
3. Restraint will be implemented in such a way as to protect the health and safety of the student and others.
4. Restraint will not deprive the student of basic human necessities.

"Emergency" means a situation in which a student's behavior poses a threat of:

1. Imminent, serious physical harm to the student or others; or
2. Imminent, serious property destruction.

Training for school employees, volunteers, or independent contractors will be provided according to the following requirements:

1. 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.
2. 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.
3. Training on the use of restraint must include prevention and de-escalation techniques and provide alternatives to the use of restraint.
4. All trained personnel will receive instruction in current professionally accepted practices and standards regarding behavior management and the use of restraint.

In a case in which restraint is used, school employees, volunteers, or independent contractors will implement the following documentation requirements:

1. On the day restraint is utilized, the campus administrator or designee must be notified verbally or in writing regarding the use of restraint.
2. On the day restraint is utilized, a good faith effort will be made to verbally notify the parent(s) regarding the use of restraint.
3. 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.
4. 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 ARD committee when it considers the impact of the student's behavior on the student's learning and/or the creation or revision of the behavioral intervention plan (BIP).
5. Written notification to the parent(s) and documentation to the student's special education eligibility folder will include the following:
 - a. Name of the student;
 - b. Name of the staff member(s) administering the restraint;

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- c. The date of the restraint and the time the restraint began and ended;
- d. Location of the restraint;
- e. Nature of the restraint;
- f. A description of the activity in which the student was engaged immediately preceding the use of restraint.
- g. The behavior that prompted the restraint;
- h. The efforts made to de-escalate the situation and alternatives to restraint that were attempted; and
- i. Information documenting parent contact and notification.

For purposes of 19 TAC §89.1053(c), (d), (e), restraint does not include the use of:

1. Physical contact or appropriately prescribed adaptive equipment to promote normative body positioning and/or physical functioning;
2. Limited physical contact with a student to promote safety (e.g., holding a student's hand), prevent a potentially harmful action (e.g., running into a street), teach a skill, redirect attention, provide guidance to a location or provide comfort;
3. Limited physical contact or appropriately prescribed adaptive equipment to prevent a student from engaging in ongoing, repetitive self-injurious behaviors; or
4. Seat belts and other safety equipment used to secure students during transportation.

A school employee, volunteer, or independent contractor may use time-out with the following limitations.

1. Physical force or threat of physical force will not be used to place a student in time-out.
2. Time-out may 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 targeted behavior.
3. Use of time-out will not be implemented in a fashion that precludes 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 the student's IEP.

Training for school employees, volunteers, or independent contractors will be provided according to the following requirements:

1. 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.
2. 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.

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3. 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 the student's IEP.
4. All trained personnel will receive instruction in current professionally accepted practices and standards regarding behavior management and the use of time-out.

Necessary documentation or data collection regarding the use of time-out, if any, must be addressed in the IEP or BIP. The ARD committee must use any collected data to judge the effectiveness of the intervention and provide a basis for making determinations regarding its continued use.

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 student and others. No discipline management practice may be calculated to inflict injury, cause harm, demean, or deprive the student of basic human necessities.

With the exception of actions covered under 19 TAC §89.1053(f), cumulative data regarding the use of restraint must be reported through the Public Education Information Management System (PEIMS).

[19 TAC §89.1053]

P. STUDENT DISCIPLINE: EMERGENCY PLACEMENT

STUDENTS WITH DISABILITIES

If the student is a student with disabilities who receives special education services, the emergency placement is subject to federal law and regulations and must be consistent with the consequences that would apply under Texas Education Code Chapter 37, Subchapter A, to a student without a disability. [TEC §37.019(c)]

XI. TRANSFER OF STUDENTS RESIDING IN HOUSEHOLD OF STUDENT RECEIVING SPECIAL EDUCATION SERVICES

If, for the purpose of receiving special education services under Subchapter A, Chapter 29, a school district assigns a student to a district campus other than the campus the student would attend based on the student's residence, the district shall permit the student's parent, guardian, or other person standing in parental relation to the student to obtain a transfer to the assigned campus for any other student residing in the household of the student receiving special education services, provided that:

1. the other student is entitled under Section 25.001 to attend school in the district; and
2. the appropriate grade level for the other student is offered at the campus.

A school district is not required to provide transportation to a student who transfers to another

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campus under this section. This subsection does not affect any transportation services provided by the district in accordance with other law for the student receiving special education services.

This section does not apply if the student receiving special education services resides in a residential facility.

[*TEC §25.0343*]