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Registration # TX4-030-492

Wood County SSA

OPERATING GUIDELINES

FOR

SPECIAL EDUCATION SERVICES

Wood County SSA

OPERATING GUIDELINES FOR SPECIAL EDUCATION SERVICES

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Hawkins ISD: Mr. Morris Lyon, Superintendent
Mineola ISD: Mrs. Kim Tunnell, Superintendent
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Date Revised: _____ Section and Title rev: _____

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Wood County SSA

POLICIES AND PROCEDURES

Local board policies and the Legal Framework for the Child-Centered Special Education Process constitute "policies and procedures" for purposes of satisfying 34 CFR 300.201. The Wood County SSA will follow these policies and procedures to ensure IDEA and its accompanying federal regulations, State statutes and regulations are implemented for each qualifying student with a disability.

The special education programs in the Wood County SSA operate under local district board policies and the Legal Framework for the Child-Centered Special Education Process. This operational guidelines manual is to clarify and support local district policy, State Board of Education and Commissioner's Rules for Special Education Services, and 34 Code of Federal Regulations (Individuals with Disabilities Education Act) IDEA 2004 - Part 300 – final revised regulations dated August 14, 2006. The local district board approved policy manual may be found online on the website of each school district member of the WCSESSA.

The Legal Framework for the Child-Centered Special Education Process may be found online. The WCSESSA also uses approved district forms to document compliance with the Legal Framework for the Child-Centered Special Education Process. Training on personnel responsible for each step in the Child-Centered Special Education Process is conducted annually.

The list on the next page includes the most frequently referenced policy sections which relate to special education services.

Wood County SSA
SCHOOL BOARD POLICY

Section	Policy Area
DMA	Professional Development
DMB	Professional Development: Special Programs
EEL	Contracts with Outside Agencies for Special Education Services
EHB	Curriculum Design
EHBA	Special Programs: Special Education
EHBAA	Identification, Evaluation, and Eligibility
EHBAB	ARD Committee and Individualized Education Program
EHBAC	Students in Non-District Placement
EHBAD	Transition Services
EHBAE	Procedural Requirements
EIED	Promotion, Retention and Placement: Graduation
EKB	Testing Programs
FDC	Admissions and Attendance: Compulsory Attendance
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M. Texas School for the Deaf (TSD)
N. Texas School for the Blind and Visually Impaired (TSBVI)

VIII. Child Find

IX. Home Language Survey

X. Language Proficiency Assessment Committee

Section 1. - INTERVENTION / REFERRAL

I. PRIOR TO INITIAL REFERRALS TO SPECIAL EDUCATION

Prior to a referral to special education, students experiencing difficulties progressing in the general curriculum should be considered for all support services and intervention programs available to all students in the district, including tutoring, RTI programs, and remedial or compensatory programs. Implementation of any intervention program cannot serve to delay or deny referral, evaluation, and eligibility determinations under the IDEA when students are suspected of having a disability and a need for special education services. The federal law has some requirements to consider. Below are listed some of the regulations.

Title I – Amendments to the Individuals with Disabilities Education Act (IDEA) "Part A-General Provisions
118 Statute 2647 - Sec. 601 (c) Findings – Congress finds the following:

(5) Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by –

(A) having high expectations for such children and ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible;

(E) supporting high quality, intensive preservice preparation and professional development for all personnel who work with children with disabilities in order to ensure that such personnel have the skills and knowledge necessary to improve the academic achievement and functional performance of children with disabilities, including the use of scientifically based instructional practices,;

(F) providing incentives for whole-school approaches, scientifically based early reading programs, positive behavioral interventions and supports, and early intervening services to reduce the need to label children as disabled in order to address the learning and behavioral needs of such children.

§300.309 Determining the existence of a specific learning disability.

(b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in § § 300.304 through 300.306 -

(1) Data that demonstrate that prior to, or as a part of the referral process, the child was provided appropriate instruction delivered by qualified personnel; and

(2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

(c) The WCSESSA must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in § § 300.301 and 300.303, unless extended by mutual agreement of the child's parents and a group of qualified professionals, as described in 300.306(a)(1)--

(1) If, prior to a referral, the child has not made adequate progress after an appropriate period of time, when provided instruction, as described in paragraphs (b)(1) and (2) of this section; and

(2) Whenever a child is referred for an evaluation.

The support services, intervention program options to address the students' difficulties should be made in collaboration with parents, who should be notified of their right to request a special education referral at any time. If students continue to struggle with the general curriculum despite provision of interventions, the student should be referred for a special education evaluation within a reasonable timeframe, depending on the degree of response to interventions, the parents' input, and the degree of difficulty the student is experiencing in meeting mastery criteria on general curriculum. Implementation of any intervention program cannot serve to delay or deny referral, evaluation, and eligibility determinations under the IDEA when students are suspected of having a disability and a need for special education services. Specific Learning Disability is also found in Section 3 - Disability Criteria.

Specific Learning Disability is also found in Section 3 – Disability Criteria.

TEC §29.023. NOTICE OF RIGHTS.

(a) The agency shall develop a notice for distribution as provided by Subsection (c) and posting on the agency's Internet website that indicates:
  (1) the change made from 2016 to 2017 in reporting requirements for school districts and open-enrollment charter schools regarding the special education representation indicator adopted in the Performance-Based Monitoring Analysis System Manual; and
  (2) in plain language, the rights of a child under both federal and state law and the general process available to initiate a referral of a child for a full individual and initial evaluation under Section 29.004 to determine the child's eligibility for special education services.

(b) A school district or open-enrollment charter school shall include in the notice developed by the agency under Subsection (a) information indicating where the local processes and procedures for initiating a referral for special education services eligibility evaluation may be found.

(c) By a date established by the commissioner, each school district or open-enrollment charter school shall provide the notice to the parent of each child who attends school in the district or at the school at any time during the 2019-2020 school year. A school district or open-enrollment charter school shall also make the notice available on request to any person. The notice must be available in English and Spanish, and a school district or open-enrollment charter school shall make a good faith effort to provide the notice in the parent's native language if the parent's native language is a language other than English or Spanish.

(d) The notice is in addition to requirements imposed by Section 26.0081.

(e) The commissioner may adopt rules necessary to implement this section.

(f) This section expires September 1, 2023.

Parents can request a referral at any time regardless of whether the student is receiving interventions through an RTI system. OSEP has advised that unless the district believes there is no reason to suspect that a child has a disability and is in need of special education services, an evaluation must be conducted within the applicable timeline. If, however, the district does not susepct the child is a child with a disability and denies the request for an initial evaluation, the local campus designee must: 1) provide written notice to parents explaining why the district declines to conduct an initial evaluation and the information that was used as the basis for that decision; 2) provide the parent with a copy of their procedural safeguards and be sure they are informed they can challenge this decision by requesting a due process hearing under 34 CFR §300.153 to resolve the dispute regarding the child's need for an evaluation; and 3) campus principals will determine the designee responsible for providing this infomraiton to the parent.

TEC §26.004. ACCESS TO STUDENT RECORDS.

(a) In this section, "intervention strategy" means a strategy in a multi-tiered system of supports that is above the level of intervention generally used in that system with all children. The term includes response to intervention and other early intervening strategies.

(b) A parent is entitled to access to all written records of a school district concerning the parent's child, including:
  (1) attendance records;
  (2) test scores;
  (3) grades;
  (4) disciplinary records;
  (5) counseling records;
  (6) psychological records;
  (7) applications for admission;
  (8) health and immunication information;
  (9) teacher and school counselor evaluations;
  (10) reports of behavioral patterns; and
  (11) records relating to assistance provided for learning difficulties, including information collected regarding any intervention strategies used with the child.

Response to Intervention (RtI) and Learning Disability (LD) Eligibility:
https://tea.texas.gov/Academics/Special_Student_Populations/Special_Education/Programs_and_Services/Response_to_Intervention/

The WCSESSA is required to provide parents with notice whenever their child begins to receive intervetion strategies. The notice must contain specific requirements. TEA has created a template that LEAs can use that meets the statutory requirements. For a sample of the notice form required in TEC §26.0081(d) as well as the Response to Intervetion (RtI) and Learning Disability (LD) Eligibility document from TEA, use this link: https://tea.texas.gov/Academics/Special_Student_Populations/Special_Education/Programs_and_Services/Response_to_Intervention/

TEC §26.0081. RIGHT TO INFORMATION CONCERNING SPECIAL EDUCATION AND EDUCATION OF STUDENTS WITH LEARNING DIFFICULTIES.

(a) The agency shall produce and provide to school districts sufficient copies of a comprehensive, easily understood document that explains the process by which an individualized education program is developed for a student in a special education program and the rights and responsibilities of a parent concerning the process. The document must include information a parent needs to effectively participate in an admission, review, and dismissal committee meeting for the parent's child.

(b) The agency will ensure that each school district provides the document required under this section to the parent as provided by 20 U.S.C. Section 1415(b):

(1) as soon as practicable after a child is referred to determine the child's eligibility for admission into the district's special education program, but at least five school days before the date of the initial meeting of the admission, review, and dismissal committee; and

(2) at any other time on reasonable request of the child's parent.

(c) The agency shall produce and provide to school districts a written explanation of the options and requirements for providing assistance to students who have learning difficulties or who need or may need special education. The explanation must state that a parent is entitled at any time to request an evaluation of the parent's child for special education services under Section 29.004 or for aids, accommodations, or services under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794). Each school year, each district shall provide the written explanation to a parent of each district student by including the explanation in the student handbook or by another means.

(d) Each school year, each school district shall notify a parent of each child, other than a child enrolled in a special education program under Subchapter A, Chapter 29, who receives assistance from the district for learning difficulties, including through the use of intervention strategies, as that term is defined by Section 26.004, that the district provides that assistance to the child. The notice must:

(1) be provided when the child begins to receive the assistance for that school year;

(2) be written in English or, to the extent practicable, the parent's native language; and

(3) include:

(A) a reasonable description of the assistance that may be provided to the child, including any intervention strategies that may be used;

(B) information collected regarding any intervention in the base tier of a multi-tiered system of supports that has previously been used with the child;

(C) an estimate of the duration for which the assistance, including through the use of intervention strategies, will be provided;

(D) the estimated time frames within which a report on the child's progress with the assistance, including any intervention strategies used, will be provided to the parent; and

(E) a copy of the explanation provided under Subsection (c).

(e) The notice required under Subsection (d) may be provided to a child's parent at a meeting of the team established for the child under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), if applicable.

TEC §38.003. SCREENING AND TREATMENT FOR DYSLEXIA AND RELATED DISORDERS.

(a) Students enrolling in public schools in this state shall be screened or tested, as appropriate, for dyslexia and related disorders at appropriate times in accordance with a program approved by the State Board of Education. The program must include screening at the end of the school year of each student in kindergarten and each student in the first grade.

(b) In accordance with the program approved by the State Board of Education, the board of trustees of each school district shall provide for the treatment of any student determined to have dyslexia or a related disorder.

(b-1) Unless otherwise provided by law, a student determined to have dyslexia during screening or testing under Subsection (a) or accommodated because of dyslexia may not be rescreened or retested for dyslexia for the purpose of reassessing the student's need for accommodations until the district reevaluates the information obtained from previous screening or testing of the student.

(c) The State Board of Education shall adopt any rules and standards necessary to administer this section.

(d) In this section:
(1) "Dyslexia" means a disorder of constitutional origin manifested by a difficulty in learning to read, write, or spell, despite conventional instruction, adequate intelligence, and sociocultural opportunity.
(2) "Related disorders" includes disorders similar to or related to dyslexia, such as developmental auditory imperception, dysphasia, specific developmental dyslexia, developmental dysgraphia, and developmental spelling disability.

TAC §74.28. Students with Dyslexia and Related Disorders.

(a) In order to support and maintain full educational opportunity for students with dyslexia and related disorders and consistent with federal and state law, school districts and open-enrollment charter schools shall provide each student with dyslexia or a related disorder access to each program under which the student qualifies for services.

(b) ~~[(a)]~~ The board of trustees of a school district or the governing body of an open-enrollment charter school must ensure that procedures for identifying a student with dyslexia or a related disorder and for providing appropriate, evidence-based instructional services to the student are implemented in the district. ~~These procedures will be monitored by the Texas Education Agency with on-site visits conducted as appropriate.~~

(c) ~~[(b)]~~ A school district's or open-enrollment charter school's procedures must be implemented according to the State Board of Education (SBOE) approved strategies for screening, individualized evaluation, and techniques for treating dyslexia and related disorders. The strategies and techniques are described in the "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders," a set of ~~flexible~~ guidelines for school ~~local~~ districts and open-enrollment charter schools that may be modified by the SBOE only with broad-based dialogue that includes input from educators and professionals in the field of reading and dyslexia and related disorders from across the state. ~~Screening should only be done by individuals/professionals who are trained to assess students for dyslexia and related disorders.~~

(d) Screening as described in the "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders," and further evaluation should only be conducted by individuals who are trained in valid, evidence-based assessments and who are trained to appropriately evaluate students for dyslexia and related disorders.

(e) ~~[(c)]~~ A school district or open enrollment charter school shall purchase a reading program or develop its own evidence-based reading program for students with dyslexia and related disorders that is aligned with the descriptors found in the "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders." Teachers who screen and treat these students must be trained in instructional strategies that use ~~which utilize~~ individualized, intensive, multisensory, phonetic methods and a variety of writing and spelling components described in the "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders." The professional development activities specified by each open-enrollment charter school and district and/or campus planning and decision making committee shall include these instructional strategies.

(f) ~~[(d)]~~ At least five school days before any ~~[Before an]~~ ~~[identification or]~~ evaluation or identification ~~[assessment]~~ procedure is used selectively with an individual student, the school district or open-enrollment charter school must provide written notification to ~~[notify]~~ the student's parent or guardian or another person standing in parental relation to the student of the proposed identification or evaluation. The notice must be in English, or to the extent practicable, the individual's native language and must include the following: ~~[.]~~
(1) a reasonable description of the evaluation procedure to be used with the individual student;
(2) information related to any instructional intervention or strategy used to assist the student prior to evaluation;
(3) an estimated time frame within which the evaluation will be completed; and
(4) specific contact information for the campus point of contact, relevant Parent Training and Information Projects, and any other appropriate parent resources.

(g) Before a full individual and initial evaluation is conducted to determine whether a student has a disability under the Individuals with Disabilities Education Act (IDEA), the school district or open-enrollment charter school must notify the student's parent or guardian or another person standing in parental relation to the student of its proposal to conduct an evaluation consistent with 34 Code of Federal Regulations (CFR), §300.503, provide all information required under subsection (f) of this section, and provide:
(1) a copy of the procedural safeguards notice required by 34 CFR, §300.504;
(2) an opportunity to give written consent for the evaluation; and
(3) a copy of information required under Texas Education Code (TEC), §26.0081.

(h) ~~[(e)]~~ Parents/guardians of a student with dyslexia or a related disorder ~~students eligible under the Rehabilitation Act of 1973, §504,~~ must be informed of all services and options available to the student, including general education interventions under response to intervention and multi-tiered systems of support

models as required by TEC, §26.0081(d), and options under ~~that~~ federal law, including IDEA and the Rehabilitation Act, §504 ~~statute~~.

(i) ~~[(f)]~~ Each school or open-enrollment charter school must provide each identified student access at his or her campus to instructional programs required in subsection (e) ~~(c)~~ of this section and to the services of a teacher trained in dyslexia and related disorders. The school district or open-enrollment charter school may, with the approval of each student's parents or guardians, offer additional services at a centralized location. Such centralized services shall not preclude each student from receiving services at his or her campus.

(j) ~~[(g)]~~ Because early intervention is critical, a process for early identification, intervention, and support for students at risk for dyslexia and related disorders must be avialable in each district and open-enrollment charter school as outlined in the "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders." School districts and open-enrollment charter schools may not use early intervention strategies, including multi-tiered systems of support, to delay or deny the provision of a full and individual evaluation to a child suspected of having a specific learning disability, including dyslexia or a related disorder.

(k) ~~[(h)]~~ Each school district and open-enrollment charter school shall provide a parent education program for parents/guardians of students with dyslexia and related disorders. This program must ~~should~~ include:

(1) awareness and ~~of~~ characteristics of dyslexia and related disorders;

(2) information on testing and diagnosis of dyslexia and related disorders;

(3) information on effective strategies for teaching ~~dyslexic~~ students with dyslexia and related disorders; ~~and~~

(4) information on qualifications of those delivering services to students with dyslexia and related disorders;

(5) ~~(4)~~ awareness of information on accommodations and modifications ~~modification~~, especially those ~~modifications~~ allowed for ~~on~~ standardized testing;

(6) ~~(5)~~ information on eligibility, evaluation requests, and services available under IDEA and the Rehabilitation Act, §504, and information on the response to intervention process; and

(7) ~~(6)~~ contact information for the relevant regional and/or school district or open-enrollment charter school specialists.

(l) School districts and open-enrollment charter schools shall provide to parents of children suspected to have dyslexia or a related disorder a copy or a link to the electronic version of the "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders."

(m) ~~[(l)]~~ School districts and open-enrollment charter schools will be subject to monitoring for compliance with federal law and regulations in connection with this section.

Current TEA Dyslexia Handbook: https://tea.texas.gov/academics/dyslexia/

The Special Education Department will train appropriate special education staff and administrators regarding these dyslexia rules. Appropriate special education information and assistance will be provided to the personnel conducting the parent education program.

TEC §42.006. PUBLIC EDUCATION INFORMATION MANAGEMENT SYSTEM (PEIMS).

(a-3) The commissioner by rule shall require each school district and open-enrollment charter school to annually report through the Public Education Information Management System information regarding the total number of students, other than students described by Subsection (a-4), enrolled in the district or school with whom the district or school, as applicable, used intervention strategies, as that term is defined by Section 26.004, at any time during the year for which the report is made. The agency shall maintain the information provided in accordance with this subsection.

(a-4) The commissioner by rule shall require each school district and open-enrollment charter school to annually report through the Public Education Information Management System information regarding the total number of students enrolled in the district or school to whom the district or school provided aids, accommodations, or services under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), at any time during the year for which the report is made. The agency shall maintain the information provided in accordance with this subsection.

SECTION 5. This Act applies beginning with the 2017-2018 school year.

SECTION 6. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

TAC §89.1011. Full Individual and Initial Evaluation.

(a) Referral of students for a full individual and initial evaluation for possible special education services must be a part of the WCSESSA'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; response to evidence-based ~~scientific, research-based~~ intervention; and other academic or behavior support services. If the student continues to experience difficulty in the general classroom after the provision of interventions, district personnel must refer the student for a full individual and initial evaluation. This referral for a full individual and 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.

(b) If a parent submits 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 school district must, not later than the 15th school day after the date the district receives the request:

(1) provide the parent with prior written notice of its proposal to conduct an evaluation consistent with 34 Code of Federal Regulations (CFR), §300.503; a copy of the procedural safeguards notice required by 34 CFR, §300.504; and an opportunity to give written consent for the evaluation; or

(2) provide the parent with prior written notice of its refusal to conduct an evaluation consistent with 34 CFR, §300.503, and a copy of the procedural safeguards notice required by 34 CFR, §300.504.

For TAC §89.1011 in its entirety, see V. TIMELINE - in this Section 1.

The Wood County SSA will use the RtI Committee to consider all intervention services provided, all scientifically based reading or other programs used, any support services available to all students prior to referral for special education evaluation. Interventions such as tutorials, remedial support, compensatory support, and other services will be considered and documented in detail by the RtI Committee prior to referral for special education evaluation.

II. APPROPRIATE STUDENT REFERRALS FOR SPECIAL EDUCATION

Children residing within or attending a private school within the Wood County SSA who are suspected of having a disability may be referred by the RtI Committee for special education evaluation.

a. For school-age children, intervention services must be documented by the RtI Committee.

b. For school-age children, the suspected disability must be interfering with the student's educational progress in order to warrant a referral.

c. Students who are not currently enrolled on a campus in WCSESSA may also be referred by the principal, designee of the student's school/private school, physician, parent, etc.

d. Students who are new to WCSESSA and have been receiving special education services in the student's previous district will not go through the referral process. (see Transfers/Temporary Placement in this section and ARD/IEP Section 4).

TAC § 89.1035. Age Ranges for Student Eligibility.

(a) Pursuant to state and federal law, services provided in accordance with this subchapter must be available to all eligible students ages 3-21. Services will be made available to eligible students on their third birthday. Graduation with a regular high school diploma pursuant to §89.1070 (b)(1), (b)(2)(D), (g)(1), (g)(2), (g)(3), or (g)(4)(D) of this title (relating to Graduation Requirements) terminates a student's eligibility to receive services in accordance with this subchapter. 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 regular high school diploma pursuant to §89.1070 (b)(1), (b)(2)(D), (g)(1), (g)(2), (g)(3), or (g)(4)(D) of this title, whichever comes first.

(b) In accordance with the Texas Education Code (TEC), § § 29.003, 30.002(a), and 30.081, a free, appropriate, public education must ~~[shall]~~ be available from birth to students with visual or auditory impairments. *(See Disability Criteria Section 3 for: TAC § 89.1040. Eligibility Criteria)*

III. MEMBERSHIP OF THE RTI COMMITTEE

a. The membership in the district's overall general education screening system is determined by local campus administration unless specified in WCSESSA policy.

b. Special education personnel may participate on, but not be assigned primary responsibility for the RtI Committee.

c. Special education personnel may be involved in collecting referral data ONLY for the following students:

1. pre-kindergarten students

2. students who are hospitalized, institutionalized, or admitted to treatment centers.

3. students with multiple-disabilities

4. eligible students with disabilities new to a district

5. students referred to special education during the summer

IV. GENERAL EDUCATION RESPONSIBILITIES

a. The general education teacher will consider the student experiencing difficulty in the general classroom for all support services available to all students such as tutorial, remedial, compensatory, and other services.

b. The general education teacher will discuss, consider, and document student educational concerns and all educational alternatives and options available and those tried, the amount of time tried, and reasons why those tried did not work. For students referred with a suspected learning disability, data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, must have been documented and provided to the child's parents prior to referral for special education evaluation.

c. If the options tried were not successful, the WCSESSA referral forms required are outlined in the directions of the referral packet. All required information (including Procedural Safeguards) will be completed by the local campus staff with appropriate signatures and dates. Required information includes the TEA publication " A Guide to the Admission, Review and Dismissal Process". The student's referral data shall be maintained for documentation purposes within the special education student's eligibility folder.

d. For students whose Home Language Survey is other than English, the LPAC report, which must have been completed within the past year, must be included with the referral packet. The student should have been tested in English and their primary language. Referral information will also include referral information, LPAC report, LAS scores or equivalent test, amount of time in ESL, and a copy of the Home Language Survey.

The principal will determine the manner in which referral packets are given to teachers. WCSESSA recommends that the principal or school counselor discuss possible instructional alternatives with the teacher prior to the initiation of the RtI Committee to assure appropriate intervention services and scientifically based programs are being implemented.

V. TIMELINE – INITIAL REFERRAL TO EVALUATION

§ 300.301 Initial evaluations.

(a) General. Wood County SSA must conduct a full and individual initial evaluation, in accordance with §§300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part.

(b) Request for initial evaluation. Consistent with the consent requirements in §300.300, either a parent of a child, or WCSESSA, may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(c) Procedures for initial evaluation. The initial evaluation--

(1) (i) Must be conducted within 60 days of receiving parental consent for the evaluation; or

(ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and

(2) Must consist of procedures--

(i) To determine if the child is a child with a disability under §300.8; and

(ii) To determine the educational needs of the child.

(d) Exception. The timeframe described in paragraph (c)(1) of this section shall not apply to WCSESSA if--

(1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under § 300.8.

(e) The exception in paragraph (d)(2) of this section applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed. (Authority: 20 U.S.C. 1414(a))

TEC§ 29.004 Full and Individual Initial Evaluation (authorizing statute for §89.1011)

(a) A written report of a full individual and initial evaluation of a student for purposes of special education services shall be completed as follows, except as otherwise provided by this section:

(1) not later than the 45th school day following the date on which the school district, in accordance with 20 U.S.C. Section 1414(a), as amended, receives written consent for the evaluation, signed by the student'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

(2) 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.

(a-1) 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 30 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 signed by a student's parent or legal guardian less than 35 school days before the last instructional day of the school year or if the district receives the written consent at least 35 but less than 45 school days before the last instructional day of the school year but the student is absent from school during that period on three or more days, Subsection (a)(1) applies to the date the written report of the full individual and initial evaluation is required.

(a-2) For purposes of this section, "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 for purposes of this section.

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

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

(c) 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 U.S.C. Section 1415(b).

SECTION 2. Section 29.004, Education Code, as amended by this Act, applies to completion of a report of a full individual and initial evaluation of a public school student for purposes of special education services only as to an initial evaluation performed on or after September 1, 2013.

SECTION 3. This Act takes effect September 1, 2013.

TAC §89.1011. Full Individual and Initial Evaluation.

(a) Referral of students for a full individual and initial evaluation for possible special education services must be a part of the WCSESSA'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; response to evidence-based ~~scientific, research-based~~ intervention; and other academic or behavior support services. If the student continues to experience difficulty in the general classroom after the provision of interventions, district personnel must refer the student for a full individual and initial evaluation. This referral for a full individual and 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.

(b) If a parent submits 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 school district must, not later than the 15th school day after the date the district receives the request:

(1) provide the parent with prior written notice of its proposal to conduct an evaluation consistent with 34 Code of Federal Regulations (CFR), §300.503; a copy of the procedural safeguards notice required by 34 CFR, §300.504; and an opportunity to give written consent for the evaluation; or

(2) provide the parent with prior written notice of its refusal to conduct an evaulation consistent with 34 CFR, §300.503, and a copy of the procedural safeguards notice required by 34 CFR, §300.504.

(c) Except as otherwise provided in this section, a written report of a full individual and initial evaluation of a student must be completed as follows:

(1) not later than the 45th school day following the date on which the school district receives written consent for the evaluation from the student's parent, except that if a student has been absent from school during that period on three or more school 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

(2) 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 from the student's parent.

(d) The admission, review, and dismissal (ARD) committee must make its decisions regarding a student's initial eligibility determination and, if appropriate, individualized education program (IEP) and placement within 30 calendar days from the date of the completion of the written full individual and initial evaluation report. If the 30th day falls during the summer and school is not in session, the student's ARD committee has until the first day of classes in the fall to finalize decisions concerning the student's initial eligibility determination, IEP, and placement, unless the full individual and initial evaluation indicates that the student will need extended school year services during that summer.

(e) Notwithstanding the timelines in subsections (c) and (d) of this section, if the school district received the written consent for the evaluation from the student's parent at least 35 but less than 45 school days before the last instructional day of the school year, the written report of a full individual and initial evaluation of a student must be provided to the student's parent not later than June 30 of that year. The student's ARD committee must meet not later than the 15th school day of the following school year to consider the evaluation. If, however, the student was absent from school three or more days between the time that the school district received written consent and the last instructional day of the school year, the timeline in subsection (c)(1) of this section applies to the date the written report of the full individual and initial evaluation is required.

(f) If a student was in the process of being evaluated for special education eligibility by a school district and enrolls in another school district before the previous school district completed the full individual and initial evaluation, the new school district must coordinate with the previous school district as necessary and as expeditiously as possible to ensure a prompt completion of the evaluation in accordance with 34 CFR, §300.301(d)(2) and (e) and §300.304(c)(5). The timelines in subsections (c) and (e) of this section do not apply in such a situation if:
(1) the new school district is making sufficient progress to ensure a prompt completion of the evaluation; and
(2) the parent and the new school district agree to a specific time when the evaluation will be completed.

(g) For purposes of subsections (b), (c), and (e) of this section, 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.

(h) For purposes of subsections (c)(1) and (e) of this section, a student is considered absent for the school day if the student is not in attendance at the school's official attendance taking time or at the alternate attendance taking time set for that student. A student is considered in attendance if the student is off campus participating in an activity that is approved by the school board and is under the direction of a professional staff member of the school district, or an adjunct staff member who has a minimum of a bachelor's degree and is eligible for participation in the Teacher Retirement System of Texas.

§ 300.302 Screening for instructional purposes is not evaluation.
The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services. (Authority: 20 U.S.C. 1414(a)(1)(E))

VI. SPECIAL EDUCATION DEPARTMENT RESPONSIBILITIES

A. Referral Packet

1. *When the RtI Committee is completed, a Referral Packet will be used at each campus. The Referral Packet includes (but is not limited to) Parental Receipt of Procedural Safeguards, Notice of Evaluation and Consent for Evaluation. Also provided was the TEA publication " A Guide to the Admission, Review and Dismissal Process".*
2. *The special education designee marks on the Referral packet (or in the special education electronic system): the date parent signed Consent for Evaluation is received by the school and the date the FIE is due.*
3. *The evaluation person determines evaluation needed and contacts appropriate special education personnel to assist and/or conduct evaluation (if student is suspected of having an auditory impairment (AI), visual impairment (VI), bilingual, etc.)*
4. *The evaluation person conducts the evaluation and completes the Full and Individual Evaluation (FIE) written report. The appropriate campus personnel who send the Notice of ARD Meeting are notified when the report is completed.*

B. Schedule ARD/IEP Meeting

The person designated by the principal on each campus notifies the principal that the data collection is complete and ready for the ARD/IEP committee's review. The designated person schedules the ARD/IEP meeting and sends the Notice of ARD/IEP Meeting to the parent and notifies other required participants. (See Procedural Safeguards, section 7 of this manual, for specific requirements on Notice.) The parent must be provided the Notice of ARD/IEP Meeting at least 5 school days prior to the date of the meeting. The parents may waive the 5 day notice if they choose.

C. Timeline for ARD/IEP Meeting

TAC § 89.1011 (d)

The admission, review, and dismissal (ARD) committee must make its decisions regarding a student's initial eligibility determination and, if appropriate, individualized education program (IEP) and placement within 30 calendar days from the date of the completion of the written full individual and initial evaluation report. If the 30th day falls during the summer and school is not in session, the student's ARD committee has until the first day of classes in the fall to finalize decisions concerning the student's initial eligibility determination, IEP, and placement, unless the full individual and initial evaluation indicates that the student will need extended school year services during that summer.

For the entire content of TAC §89.1011 please look above at V. TIMELINE and you will see all of TAC §89.1011(a - h).

D. Transfers from Outside the District – already in Special Education

For students who are new to WCSESSA and have received special education services in the student's previous school district, regular referral procedures are bypassed. Procedures to be followed are included in the ARD/IEP Section 4 of this manual under Transfers.

VII. REFERRALS FOR SPECIFIC AREAS:

§ 300.305 Additional requirements for evaluations and reevaluations.

(a) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must--

(1) Review existing evaluation data on the child, including—

(i) Evaluations and information provided by the parents of the child;

(ii) Current classroom-based local or State assessments, and classroom-based observations; and

(iii) Observations by teachers and related services providers; and

(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed…….

(for entire text, see Section 2 – FIE)

Any evaluation of an existing special education student is NOT a referral but is a reevaluation and should follow all requirements of 300.305 found in Section 2 of FIE.

A. Adapted Physical Education (APE)

§ 300.108 Physical education.

The TEA must ensure that public agencies in the State comply with the following:

(a) General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the WCSESSA enrolls children without disabilities and does not provide PE to children without disabilities in the same grades.

(b) Regular physical education. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless--

(1) The child is enrolled full time in a separate facility; or

(2) The child needs specially designed physical education, as prescribed in the child's IEP.

(c) Special physical education. If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs.

(d) Education in separate facilities. The public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this section.

(Authority: 20 U.S.C. 1412(a)(5)(A))

1. *All students referred for adapted physical education evaluation must have an identified disability.*
   - A. *The request for an adapted physical education evaluation must be made by the RtI Committee upon initial referral or by the student's ARD/IEP committee.*
   - B. *The evaluation person will monitor the referral and forward the request for APE screening/evaluation to the appropriate person.*
2. *A written report from the adapted physical education evaluation personnel will be made available for ARD/IEP committee consideration and action.*
3. *For more information see (Section 5 – Instructional Arrangements/Service Delivery)*

B. Assistive Technology *(For more information see also FIE Section 2 and ARD/IEP Section 4)*

1. *The RtI Committee typically does not address specific Assistive Technology recommendations because all evaluations will address Assistive Technology needs for the student. Referral for any additional, specific AT evaluations generally are made by the ARD/IEP Committee after an FIE has been completed and reviewed.*
2. *FIE (Full and Individual Evaluation) - The ARD/IEP Committee will first review the recommendations from the most recent FIE (Full and Individual Evaluation). Assistive technology needs will be discussed and consideration given to the competencies, strengths and weaknesses, and recommendations from the evaluation report.*
3. *The ARD/IEP Committee may recommend additional evaluation by the technology assistance team. The technology assistance team may include any of the following professionals: Occupational Therapist,*

Physical Therapist, Speech Pathologist, Diagnostician, Vision Teacher, Special Education Teacher, others as needed.

4. *If the technology assistance team is requested for an evaluation, the team member(s) will make written recommendations in an evaluation report for assistive technology services or devices including specific modifications which are needed to implement the student's individual education plan. The ARD/IEP Committee will then consider the recommendations.*
5. *Recommendations for assistive technology for all students from the ARD/IEP Committee meetings will be logged and tracked by the campus designee to assure follow up occurs in ordering of material, any training required, etc.*

C. Attention Deficit Disorder / Attention Deficit with Hyperactivity Disorder

If the general education staff has documented evidence the student exhibits ADD/ADHD behaviors/symptoms, it is important to remember when conferencing with parent:

1. *discuss the educational needs with parent and instructional strategies implemented and need for referral to the RtI Committee – do not provide information on a specific type of disability which is not your area of expertise and training, etc.;*
2. *discuss other information or factors occurring in the home;*
3. *the OHI Disability Report for the physician is not to be provided to the parent by the general education staff or the RtI Committee.*

If the RtI Committee or the ARD/IEP Committee makes the referral for special education evaluation: The Multidisciplinary Team (referring teacher, special education teacher and diagnostician) will meet to review existing evaluation data, determine appropriate evaluation measures, conduct the evaluation and determine if student meets criteria as a student with a disability. Comprehensive evaluation procedures will be followed as outlined in sections 2-3 of the Operating Guidelines. If the student data indicates a possibility of ADD, the team may recommend that the Other Health Impaired (OHI) eligibility be pursued.

§ 300.306 Determination of eligibility.

(b) Special rule for eligibility determination. A child must not be determined to be a child with a disability under this part--

(1) If the determinant factor for that determination is--

(i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA) "as such section was in effect on the day before the date of enactment on the Every Student Succeeds Act (December 9, 2015)"; *see section 2 of Operating Guidelines*

(ii) Lack of instruction in math; or

(iii) Limited English proficiency; and

(2) If the child does not otherwise meet the eligibility criteria under § 300.8(a). *see section 3*

TAC § 38.016. Psychotropic Drugs and Psychiatric Evaluations or Examinations.

(a) In this section:

(1) "Parent" includes a guardian or other person standing in parental relation.

(2) "Psychotropic drug" means a substance that is:

(A) used in the diagnosis, treatment, or prevention of a disease or as a component of a medication; and

(B) intended to have an altering effect on perception, emotion, or behavior.

(b) A school district employee may not:

(1) recommend that a student use a psychotropic drug; or

(2) suggest any particular diagnosis; or

(3) use the refusal by a parent to consent to administration of a psychotropic drug to a student or to a psychiatric evaluation or examination of a student as grounds, by itself, for prohibiting the child from attending a class or participating in a school related activity.

(c) Subsection (b) does not:

(1) prevent an appropriate referral under the child find system required under 20 U.S.C. Section 1412, as amended; or

(2) prohibit a school district employee who is a registered nurse, advanced nurse practitioner, physician, or certified or appropriately credentialed mental health professional from recommending that a child be

evaluated by an appropriate medical practitioner; or

(3) prohibit a school employee from discussing any aspect of a child's behavior or academic progress with the child's parent or another school district employee.

(d) The board of trustees of each school district shall adopt a policy to ensure implementation and enforcement of this section.

(e) An act in violation of Subsection (b) does not override the immunity from personal liability granted in Section 22.0511 or other law or the district's sovereign and governmental immunity.

If OHI pursued:

1. *the disability forms must be completed by a medical doctor.*
2. *the medical forms are for diagnosis only - we do not pursue medication;*
3. *if the parent has a doctor who knows the child and would be willing (knowledgeable) to fill out forms, that avenue may be pursued.*
4. *the medical doctor is just one member of the multidisciplinary team*

Caution: *Remember that a student may be diagnosed by a physician as having ADD or ADHD but the student may not necessarily have an educational need for special education services. Needs of some students may be addressed by the local campus Section 504 committee or classroom strategies. If you have any questions, please review with your WCSESSA campus personnel or call the WCSESSA special education office.*

D. Early Childhood Intervention (ECI) *(see also section H. for PPCD information)*

For the Memorandum of Understanding (MOU) with the TEA and specific referral information, refer to the MOU in its entirety at: https://tea.texas.gov/index4.aspx?id=2147494988&ekfxmen_noscript=1&ekfxmensel=e9edebdf8_25769804222_25769804223

ECI is a coordinated system of services available in every county within Texas for children birth to age three with disabilities or delays. ECI is funded through the federal Individuals with Disabilities Education Act (IDEA, Part C), P.L. 105-17 and through state appropriations. ECI supports families to help children reach potential through developmental services. ECI contracts with local agencies and organizations through a funding application process.

ECI staff may include physical therapists, occupational therapists, speech and language therapists, audiologists, educators, social workers, nurses, dieticians, psychologists, licensed professional counselors, and early intervention specialists. ECI programs must follow the Texas Early Childhood Intervention Policy Manual.

The local ECI programs must identify, locate, and screen or evaluate all infants and toddlers, birth through two years of age, who have or are suspected of having developmental delays.

Before notifying the appropriate LEA that a child is potentially eligible for Part B services, the ECI program provides written notification to the child's parent advising the parent of:

a. The information that will be disclosed, including the limited personally identifiable information (child's name, child's date of birth, parent's name, address, and telephone number), the service coordinator's name, and the child's home language; and

b. The right to opt out of the disclosure by submitting a written request to Opt Out of the Notification to the ECI program (CFR) §303.209 and the timelines specified in the 40 TAC, Chapter 108 before the notification is scheduled to be sent;

For a child whose parent has not opted out of the disclosure within the prescribed timeline, the ECI program notifies the LEA at least 90 days before the child's third birthday that the child is potentially eligible for Part B services; An IEP is developed and implemented for Part B eligible children by their third birthday; The ARD committee determines the start date of the IEP if the child's birthday occurs during the summer. Services will begin by the first day of school, or earlier as determined and stated on the IEP; and For children transitioning from Part C services to Part B services, the ARD committee considers an IFSP that contains the IFSP content including the natural environments statement, described in 34 CFR §303.344, and that is developed in accordance with the IEP procedures under 34 CFR §300.323(b) when developing the initial IEP.

Key Elements of Early Transition (KEET): A Guide for Planning, Implementing, and Evaluating Smooth and Effective Transitions for Children and their Families from Local Early Childhood Intervention Contracted Programs to Local Preschool Programs for Children with Disabilities. This document provides a framework of the 16 key elements of early transition to assist LEAs and ECI contractors in developing a collaborative child find system for children who leave Early Childhood Intervention (ECI) services and enter the public school Preschool Program for Children with Disabilities (PPCD). The 16 key elements are listed in chronological order and each is accompanied by its corresponding reference(s) in the Individuals with Disabilities Education Improvement Act (IDEA) 2004, the Code of Federal Regulations (CFR), the Texas Administrative Code (TAC), the State Performance Plan (SPP), and/or TEA/DARS Early Transition Memorandum of Understanding (ECI MOU). Acronyms that are used throughout the guide are listed at the end of the document.
https://hhs.texas.gov/services/disability/early-childhood-intervention-services

The Wood County SSA will transition students from ECI to PPCD as required. Parents are provided a document from the ECI staff that describes the process. The document: Beyond ECI is located on this link in English and Spanish.

E. Homebound Instruction *(see also Instructional Arrangement Section 5)*

General Education Homebound (GEH)
Any general education student should be referred to the local campus GEH committee. A general education student who is served through the GEH program must meet the following three criteria:

1. *is expected to be confined at home or hospital bedside for a minimum of four weeks;*
2. *for medical reasons only;*
3. *medical condition is documented by a physician licensed to practice in the United States.*
   Student Attendance Accounting Manual - Section III (4-21)

Special Education Homebound – The student has already been determined to be a student with a disability and the student is receiving special education services. The WCSESSA will not use the referral committee or a referral packet in this situation.

1. Parent Responsibilities:
- *a. Contact the campus principal / special education teacher.*
- *b. Share new medical developments.*

2. School Responsibility:
- *a. Obtain parent information and the Physician's Report. The report states the medical reason for homebound confinement and the amount of time suggested by the physician.*
- *b. Schedule an ARD/IEP meeting to discuss student's educational needs.*
- *c. Any student who is placed in the special education homebound instructional arrangement/setting must meet the following four criteria:*
  - *be eligible for special education and related services as determined by an ARD committee;*
  - *is expected to be confined at home or hospital bedside for a minimum of four weeks;*
  - *for medical reasons only (unless the child is 0 – 5 years of age);*
  - *medical condition is documented by a physician licensed to practice in the United States. 19 TAC § 89.63(c)(2)(A)*
- *d. (see also Instructional Arrangement Section 5)*

F. Limited English Proficient (LEP)

(See also Home Language Survey and LPAC in this Referral Section). Additional LPAC guidance on TEA website.
http://programs.esc20.net/default.aspx?name=lpac.framework
http://tea.texas.gov/student.assessment/ell/lpac/

1. ***For all LEP (Limited English Proficient) Students:***
- *A. The LPAC report, which must have been completed within the past year, must be included with the referral packet. The student should have been tested in English and their primary language.*
- *B. Referral information will include: Initial referral information, LPAC report, LAS scores or equivalent test, amount of time in ESL, Home Language Survey copy.*
- *C. When the packet is verified, the diagnostician gives the packet to the WCSESSA Coordinator.*

*2. **Speech only referral:** (for these guidelines, Spanish is referenced as the other language)*

A. (LANGUAGE) The language proficiency assessment (ex. LAS, IDEA, other) should be considered with regard to the following:

i. If the student is proficient in English and has a lower proficiency in Spanish, the normal procedures for the speech pathologist evaluations are followed.

ii. If the student is proficient in Spanish and not in English, typically this would not be an appropriate referral. The speech pathologist will write the evaluation report (using information from the cumulative folder) and proceed to ARD.

iii. If the student is barely proficient in both languages, consult with the Coordinator or Director of WCSESSA before proceeding.

iv. If the student is proficient in both languages, normal procedures in English may be followed.

B. (ARTICULATION) The articulation evaluation should be considered with regard to the following: If the student is misarticulating sounds that are different or not present in Spanish but are in English, therapy would not be appropriate.

3. Other Referrals (LD, ID, etc.):

A. The language evaluation (ex. LAS, IDEA) should be considered with regard to the following:

i. If the student is proficient in English and lower in Spanish, the usual procedures for testing are followed.

ii. If the student is proficient in Spanish and not in English, typically this will be an inappropriate referral for a Learning Disability. This type of profile is usually an indication that the child needs more time to learn English. The diagnostician will write the FIE or full and individual evaluation report (using information from the cumulative folder) and proceed to ARD. If the student is to be considered for a physical, mental or emotional disability, collaboration with peer evaluators is necessary.

iii. If the student is barely proficient in both languages, consult with the Special Education Coordinator or Director before proceeding.

iv. If the student is above proficient in both languages, normal procedures in English may be followed.

*B. **If the student is not proficient in either language, a bilingual assessment should be requested** . Consideration should be given to the following:*

i. Students who have been in English speaking schools for less than two years should be given careful consideration relative to referral.

ii. If the student has received English instruction for two or more years and there is no evidence of previous academic instruction in Spanish or another language, the LPAC may recommend testing in English or use of an interpreter.

G. Occupational Therapy and / or Physical Therapy

1. The RtI Committee does not refer students for OT or PT because a student must already be eligible for special education services before he/she can be referred for an occupational and/or physical therapy screening or evaluation.

2. A student may be referred by the ARD/IEP meeting after review of existing evaluation data and planning the evaluation to be completed. Also, teachers, parents, physicians, and others may request referral through the ARD.

3. Occupational and/or physical therapy services are provided to students whose disability, as determined through evaluation, interferes with their ability to benefit from educational programming.

4. The diagnostician is the designated person to monitor the referrals and assure notice and consent has been given to the parents. The diagnostician will submit the following forms to the therapist when referring a student:

A. Completed Notice and Consent for a Full and Individual Evaluation;

B. OT/PT Therapy Referral Form (completed by parent, teacher, counselor, diagnostician, etc.);

C. OT/PT Medical Referral Form. (This form must be completed by a physician with approval for therapy services to be provided. This must be received by the therapist before any services can be initiated.)

D. In our district, a medical is required for evaluation and therapy services for all Physical Therapy and in some instances for Occupational Therapy.

5. Description of Therapy Services

A. Screening: This is a brief informal observation may be used to determine if a formal evaluation is necessary. It is also used as a tool to provide helpful information about the student to the staff and parents. An ARD/IEP meeting is not necessary when a screening is completed. A parent/teacher conference may be held to discuss screening results if necessary.

B. Evaluation: The therapist will look at and observe the student, using standardized tests, and clinical evaluations. The evaluation will address and analyze areas that affect the student's ability to benefit from instruction. Areas included in the evaluation are:

i. sensorimotor functioning
ii. neuromuscular abilities
iii. self-care skills
iv. vocational skills
v. school/work activities
vi. perceptual-motor skills

C. Recommendations: The therapist will complete the evaluation and make appropriate recommendations for the educational setting. Services will be determined by the child's need and how that need can best be met within the school, home, and community settings. An ARD/IEP meeting will be called to discuss therapist's evaluation and recommendations.

D. Occupational Therapy: Occupational therapy services include the evaluation, consultation, and/or direct services to individuals whose ability to cope with the tasks of living and learning is threatened or impaired by developmental deficits, environmental or sensory deprivation, physical injury, illness, or psychological disability.

E. Physical Therapy: Physical therapy is the art and science of evaluation, program planning, and implementation of physical or corrective conditions resulting from birth, illness, or injury. Physical therapy includes therapeutic exercise programs designed to develop or restore neuromuscular and / or sensorimotor function, relieve pain, control postural deviations, minimize disabilities, and maintain maximal performance levels within the individual's capabilities.

F. Students who evidence problems with one or more of the following characteristics may be referred for an OT/PT screening or evaluation:

i. Holding head and/or body upright
ii. Using arms and hands in manipulative tasks
iii. Using only one hand when both are preferable
iv. Tightness or weakness in the arms or legs
v. Assuming and maintaining sitting and/or standing without physical assistance.
vi. Impaired walking or using a gait that limits independence in classroom or campus mobility
vii. Severe eye-hand coordination
viii. Oral function (chewing, sucking, swallowing, and drooling)
ix. Self-care that limits independence in classroom or campus (assistance required with dressing, feeding, toileting, personal hygiene, etc.
x. Uncoordinated movement (unable to walk balance beam, frequent falling)
xi. Limited mobility in school (architectural barriers - stairs, narrow doorways).

H. Preschool Program for Children with Disabilities (PPCD) *(see also section 5 of this manual)*

§ 300.124 Transition of children from the Part C program to preschool programs.
The State must have in effect policies and procedures to ensure that--
(a) Children participating in early intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9) of the Act;
(b) By the third birthday of a child described in paragraph (a) of this section, an IEP or, if consistent with § 300.323(b) and section 636(d) of the Act, an IFSP, has been developed and is being implemented for the child consistent with § 300.101(b); and
(c) Each affected LEA will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10) of the Act.
(Authority: 20 U.S.C. 1412(a)(9))

§ 300.323 When IEPs must be in effect.
(a) General. At the beginning of each school year, the WCSESSA must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in § 300.320.

(b) IEP or IFSP for children aged three through five.

(1) In the case of a child with a disability aged three through five (or, at the discretion of the SEA, a two-year-old child with a disability who will turn age three during the school year), the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is--

(i) Consistent with State policy; and

(ii) Agreed to by the agency and the child's parents.

(2) In implementing the requirements of paragraph (b)(1) of this section, the WCSESSA must--

(i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and

(ii) If the parents choose an IFSP, obtain written informed consent from the parents.

§ 300.24 Individualized family service plan. *(IFSP)*

Individualized family service plan or IFSP has the meaning given the term in section 636 of the Act. (Authority 20 U.S.C. 1401(15))

§ 300.25 Infant or toddler with a disability.

Infant or toddler with a disability-

(a) Means an individual under three years of age who needs early intervention services because the individual—

(1) Is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or

(2) Has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and

(b) May also include, at a State's discretion—

(1) At-risk infants and toddlers; and

(2) Children with disabilities who are eligible for services under section 619 and who previously received services under Part C of the Act until such children enter, or are eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under Part C of the Act serving such children shall include--

(i) An educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills; and

(ii) A written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under Part C of the Act or participate in preschool programs under section 619. (Authority: 20 U.S.C. 1401(16) and 1432(5))

TEC§29.009. Public Notice Concerning Preschool Programs for Students with Disabilities.

The WCSESSA shall develop a system to notify the population in the district with children who are at least 3 years of age but younger than 6 years of age and who are eligible for enrollment in a special education program of the availability of the program.

See also the ECI Memorandum of Understanding: https://tea.texas.gov/index4.aspx?id=2147494988&ekfxmen_noscript=1&ekfxmensel=e9edebdf8_25769804222_25769804223

See also the DARS Policy Manual *http://www.dars.state.tx.us/ecis/index.shtml*

Transition from ECI.

The transition meeting between the agency, parents and school is the cornerstone of the transition process. At the discretion of all parties, it can take place not more than 9 months prior to the third birthday but not less than 90 days before the child is eligible for the preschool services, to discuss any such services that the child may receive. The meeting provides an opportunity for the family, ECI and WCSESSA staff to make plans regarding the transition process. The transition meeting is an opportunity to explain eligibility criteria, service options, and the

IEP process. The referral to the WCSESSA may be made before the transition meeting, during the transition meeting or after the transition meeting.

- *It is important to explain to the family that a delay in providing consent for WCSESSA involvement during the transition process may impede the implementation of timely, appropriate special education services for eligible children. The collaborative involvement of the family, ECI and WCSESSA staff ensures that a determination is made as to whether children with disabilities are eligible for WCSESSA special education services.*
- *The timing of a child's third birthday will influence the transition process and timeframe. Interagency collaboration is especially critical when the child turns three between the months of May and September. Generally, children turning three late in the school year should begin school services when they turn three. In some instances, the ARD committee, including the family, may decide that IEP services will begin at the start of the upcoming school year.*
- *When a child turns three during the summer, the ARD committee, which includes the family, may begin to implement the IEP upon the start of the school year. Or, if necessary for the child to receive a free and appropriate public education (FAPE), the ARD committee may decide to begin to implement the IEP through ESY services. Note: The instructional setting code for the initial ESY services should be the same as the instructional setting code for services implemented at the beginning of the fall session. The need for ESY services must be documented from formal and /or informal evaluations provided by the WCSESSA or the parents. Another agency or an ECI program could provide formal/and or informal evaluation information as one piece of the documentation.*
- *The WCSESSA and the ECI program will work closely to ensure that the IEP is in place for eligible children on their third birthday when a child is referred for services close to his/her third birthday.*

1. Referral from ECI (Early Childhood Intervention) Programs (all decisions will occur collaboratively between ECI staff, school staff, and the parents)

A. WCSESSA will complete the child centered process including evaluation and ARD. Review of existing evaluation data, all time lines and referral requirements will be followed.

i. When invited by the ECI service provider, the WCSESSA representative will attend a face to face meeting held up to 9 months prior to the eligible child's third birthday

ii. a referral should be made to WCSESSA approximately 90 days prior to the student's third birthday.

iii. To avoid a gap in services and to assure a smooth effective transition to the preschool program, WCSESSA will accept appropriate evaluations from an infant program serving children with disabilities.

iv. WCSESSA will complete the referral, evaluation, and ARD/IEP process within the required time lines.

v. Eligible preschool children will receive the necessary services as determined by the ARD/IEP committee beginning on their third birthday.

B. The ARD/IEP committee will determine eligibility, educational need and develop an IEP to determine placement.

C. Services to auditory or visual impairments birth through 2 are coordinated with ECI service providers in the development of the Individual Family Service Plan (IFSP) instead of an ARD/IEP.

i. The WCSESSA will document services were coordinated (including copies of progress reports), and

ii. The WCSESSA has the capacity to provide services to the student throughout the year.(48 weeks)

iii. Services are provided only under IDEA-C guidelines, not IDEA-B. Typical procedures followed such as: distributing Notice of Procedural Safeguards, completing the Part B referral packets, obtaining consents, and completing full and individual evaluations may not be followed. This would conflict with Part C, and cause parent confusion and may place undue hardship on parents.

2. Referral by Parents / Guardians / Others (children not previously served in ECI):

A. For children with suspected developmental delays birth through 2 years of age, the WCSESSA maintain logs that document:

i. within 2 working days from the date that a "Child Find" referral is received it is forwarded to an ECI program, (the WCSESSA will collaborate with the ECI program and determine appropriate steps based on the student age and needs), or

ii. the WCSESSA will follow up with the ECI program to assure evaluation is completed within 45 calendar days from the date the referral is received,

iii. the ARD/IEP committee will determine eligibility, educational need and develop an IEP to determine placement prior to the third birthday.

B. For children referred prior to age 3, but less than the 90 days prior to their 3rd birthday, the WCSESSA will complete the referral and evaluation process in a timely manner following the required referral timelines.

C. For children referred for services after their 3rd birthday, the normal referral process will be followed. The WCSESSA may screen and use existing evaluation data to determine the child will meet eligibility. An ARD/IEP committee may temporary place the child pending the 90 day timeline for referral, evaluation, and ARD completion.

3. Services: For eligible students 3 years of age and older, the WCSESSA will develop an IEP. If a students 3rd birthday occurs during summer, the IEP team will determine the date services under the IEP will begin.

I. Private / Nonpublic Schools *(See also Section 5 – Instructional Arrangements)*

When a student placed by their parents in private/nonpublic schools, has been referred for special education evaluation, all requirements concerning referral, evaluation, and determination of eligibility are applicable.

1. Parent Responsibilities:
- *A. Contact the appropriate neighborhood campus and initiate a referral.*
- *B. Referrals will be accepted for students who attend a private / nonpublic school within the boundaries of WCSESSA.*
- *C. Provide any documentation available to the campus Principal or counselor regarding the child's suspected disability.*
- *D. Give the Teacher Information Form from the referral packet to the teacher at the campus*

2. Campus Responsibilities:
- *A. WCSESSA will use established procedures and forms for the referral of students from private/nonpublic schools. This includes the completion of the Referral Packet.*
- *B. The principal or designee will be responsible for coordinating the gathering of information from the parent.*

NOTE: The same referral time lines apply.

3. Evaluation Person Responsibilities:
- *A. To the maximum extent possible, WCSESSA shall use referral and evaluation information from the private school's records in order to avoid unnecessary duplication of effort or services.*
- *B. Coordinate and/or administer additional recommended evaluation.*

J. Psychological Referral

WCSESSA recommends that the general education teacher consult with the Licensed Specialist in School Psychology (LSSP) or psychologist prior to making a referral if at all possible.

1. Student Is Currently Receiving Special Education Services
- *A. The ARD/IEP Committee will review existing evaluation data, both the formal FIE (Full and Individual Evaluation) and informal evaluation from staff. The ARD/IEP Committee may recommend additional psychological evaluation.*
- *B. If psychological evaluation is recommended during the ARD/IEP meeting, the minutes will document the recommendation and the parent will be provided Notice and Consent for Evaluation.*
  - *(1. If parents are not in attendance, the diagnostician will coordinate the completion of the referral for the psychological and be responsible for sending the Notice and Consent for Evaluation.*
  - *(2. The diagnostician will inform the psychologist or licensed specialist in school psychology assigned to the campus.*
  - *(3. The psychologist or licensed specialist in school psychology will conduct the evaluation, complete the written report, and inform the parent of their findings. (see FIE and ARD/IEP sections in this manual)*
- *C. An ARD/IEP meeting to review the psychological evaluation will be scheduled.*

2. Student is Not Currently Receiving Special Education Services
- *A. The general education teacher will follow the RtI Committee process, completing all required forms including notifying parents of their Procedural Safeguards, providing Notice of Evaluation and*

obtaining Consent for Evaluation.

B. The general education campus teacher or campus designee will submit the completed referral packet to the school psychologist.

K. Regional Day School Program for the Deaf *(See Section 4 and Section 5 of this document)*

L. Specific Learning Disabilities (SLD) *(See Section 4)*

M. Texas School for the Deaf (TSD) *(See Section 4 and Section 5 of this document)*

N. Texas School for the Blind and Visually Impaired (TSBVI) *(See Section 4 and Section 5 of this document)*

VIII. CHILD FIND

§300.111 Child find.

(a) General.

(1) The State must have in effect policies and procedures to ensure that--

(i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and

(ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

The WCSESSA will disseminate information to the community (including private schools, residential treatment centers, day treatment centers, hospitals, mental health institutions, detention and correctional facilities) concerning services offered to all individuals with disabilities and maintain records of efforts that may include:

1. *providing information regarding availability of screenings and other services through the local newspaper, the school tax office mailings, brochures, and other print media;*
2. *participating in a network of public information dissemination to assist with locating highly mobile and migrant children….which includes contacting other agencies, day care facilities, community public locations such as doctor offices, hospitals, laundry facilities, and facilities providing services to students with disabilities;*
3. *providing Child Find information to local private schools and discuss with private school officials regarding the RtI Committee process;*
4. *referring individuals ages 0-3 to a local Early Childhood Intervention (ECI) program for evaluation;*
5. *identifying and referring individuals with disabilities who may or may not be in school and who may need Special Education and related services using a properly constituted RtI Committee;*
6. *continuing to document persons who are currently receiving needed Special Education and related services and who are not currently receiving needed Special Education and related services;*
7. *reviewing this process on a yearly basis, updating staff about on-going "Child Find" activities implemented in the community;*
8. *maintaining confidentiality of all personally identifiable information used and collected in this system in the same manner that Special Education records are maintained;*
9. *maintaining documentation of all Child Find activities including the dates of each activity and the results of each activity; and*
10. *training appropriate staff for maintaining the documentation of all Child Find activities including students in private schools, religious schools and home schools located in the WCSESSA.*
11. *Annual screening will be performed by qualified WCSESSA personnel and may include:*
    - *general health screening, including social/behavioral health*
    - *vision screening performed to verify indicators of loss of sight, acuity, or other possible vision related problems;*
    - *hearing screening to verify any hearing risk indicators;*
    - *speech and language screening to verify problems in the formulation or articulation of speech or any delay in the development of language;*
    - *preschool screening which typically includes vision, hearing, cognition, motor, speech-language, and health components to verify developmental delays;*
    - *screening for home language*
    - *academic screening for school age children to determine the significance of academic delays; and*
    - *screening secondary level students who are at-risk of dropping out, or who have dropped out, to verify that the reasons for dropping out are not related to a previously unidentified disability.*

All screenings and evaluations resulting from child find activities are free to parents, including parents of home-schooled students and parents of students who attend private school by parent choice.

(b) Use of term developmental delay.

The following provisions apply with respect to implementing the child find requirements of this section:

(1) A State that adopts a definition of developmental delay under §300.8(b) determines whether the term applies to children aged three through nine, or to a subset of that age range (e.g., ages three through five).

(2) A State may not require WCSESSA to adopt and use the term developmental delay for any children within its jurisdiction.

(3) If WCSESSA uses the term developmental delay for children described in § 300.8(b), the WCSESSA must conform to both the State's definition of that term and to the age range that has been adopted by the State.

(4) If TEA does not adopt the term developmental delay, WCSESSA may not independently use that term as a basis for establishing a child's eligibility under this part.

(c) Other children in child find. Child find also must include--

(1) Children who are suspected of being a child with a disability under § 300.8 and in need of special education, even though they are advancing from grade to grade; and

(2) Highly mobile children, including migrant children.

(d) Construction. Nothing in the Act requires that children be classified by their disability so long as each child who has a disability that is listed in § 300.8 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.

§300.131 Child find for parentally-placed private school children with disabilities.

(a) General. The WCSESSA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the WCSESSA, in accordance with paragraphs (b) through (e) of this section, and § § 300.111 and 300.201.

(b) Child find design. The child find process must be designed to ensure--

(1) The equitable participation of parentally-placed private school children; and

(2) An accurate count of those children.

(c) Activities. In carrying out the requirements of this section, the WCSESSA, or, if applicable, the SEA, must undertake activities similar to the activities undertaken for the agency's public school children.

(d) Cost. The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if WCSESSA has met its obligation under § 300.133. *(Private school expenditures-section 5 of this document)*

(e) Completion period. The child find process must be completed in a time period comparable to that for other students attending public schools in the WCSESSA consistent with § 300.301. *(Initial Evaluations-section 2 of this document)* **(Authority: 20 U.S.C. 1412(a)(10)(A)(ii))**

(f) Out-of-state children. Each LEA in which private, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located.

§ 300.19 Homeless children.

Homeless children has the meaning given the term homeless children and youths in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 et. seq. (Authority 20 U.S.C. 1401(11))

§ 300.134 Consultation parentally-placed private school children with disabilities.

To ensure timely and meaningful consultation, the WCSESSA, or, if appropriate, the TEA, must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:

(a) Child find. The child find process, including--

(1) How parentally-placed private school children suspected of having a disability can participate equitably; and

(2) How parents, teachers, and private school officials will be informed of the process.

Annual free screenings will be provided. WCSESSA will maintain documentation of all Child Find activities including the dates of each activity and the results of each activity; and train appropriate staff for maintaining the documentation of all Child Find activities including students in private schools, religious schools and home schools located in the WCSESSA.

IX. HOME LANGUAGE SURVEY

TAC § 89.1215. Home Language Survey *http://ritter.tea.state.tx.us/rules/tac/chapter089/ch089bb.html*

(a) (a) School districts shall administer ~~[conduct]~~ only one home language survey to ~~[of]~~ each new student enrolling for the first time in a Texas public school in any grade from prekindergarten through Grade 12. ~~[The home language survey shall be administered to each student new to the school district and to students previously enrolled who were not surveyed in the past.]~~ School districts shall require that the survey be signed by the student's parent or guardian for each student in prekindergarten through Grade 8 ~~[,]~~ or by the student in Grades 9-12 as permitted under the Texas Education Code, §29.056(a)(1). The original copy of the survey shall be kept in the student's permanent record.

(b) (b) The home language survey shall be administered in English, ~~[and]~~ Spanish, and Vietnamese; for students of other language groups, the home language survey shall be translated into the primary ~~[home]~~ language whenever possible. The home language survey shall contain the following questions.

(1) "What language is spoken in the child's ~~[your]~~ home most of the time?"

(2) "What language does the ~~[your]~~ child speak most of the time?"

~~(c) Additional information may be collected by the WCSESSA and recorded on the home language survey.~~

(c) ~~(d) The home language survey shall be used to establish the student's language classification for determining whether the school district is required to provide a bilingual education or English as a second language program.]~~ If the response on the home language survey indicates that a language other than English is used, the student shall be tested in accordance with §89.1225 of this title (relating to Testing and Classification of Students) or §89.1226 of this title (relating to Testing and Classification of Students, Beginning with School Year 2019-2020).

(d) For students previously enrolled in a Texas public school, the receiving district shall secure the student records, including the home language survey. All attempts to contact the sending district to request records shall be documented. Multiple attempts to obtain the student's home language survey shall be made. If attempts to obtain the student's home language survey from the sending district are unsuccessful, the identification process shall begin while attempts to contact the sending district for records continue throughout the four-week testing and identification period.

TAC § 89.1225. Testing and Classification of Students.
http://programs.esc20.net/default.aspx?name=lpac.framework

(a) Beginning with school year 2019-2020, the provisions of this section shall expire and be superseded by the provisions in §89.1226 of this title (relating to Testing and Classification of Students, Beginning with School Year 2019-2020),

(b) Within four weeks of initial enrollment in a Texas public school, a student with a language other than English indicated on the home language survey shall be administered the required oral language proficiency test in prekindergarten through Grade 12 and norm-referenced standardized achievement instrument in Grades 2-12 as described in subsection (c) of this section and shall be identified as an English learner and placed in the required bilingual education or English as a second language (ESL) program in accordance with the criteria listed in subsection (f) of this section.

(c) ~~[(a)]~~ For identifying English ~~[language]~~ learners, school districts shall administer to each student who has a language other than English as identified on the home language survey:

(1) in prekindergarten through Grade 1, an oral language proficiency test approved by the Texas Education Agency (TEA); and

(2) in Grades 2-12, a TEA-approved oral language proficiency test and the English reading and English language arts sections from a TEA-approved norm-referenced assessment ~~[, or another test approved by the TEA, unless the norm-referenced standardized achievement instrument is not valid in accordance with subsection (f)(2)(C) of this section]~~.

(d) ~~(b)~~ School districts that provide a bilingual education program at the elementary grades shall administer an oral language proficiency test in the primary ~~[home]~~ language of the student who is eligible to be served in the bilingual education program. If the primary ~~[home]~~ language of the student is Spanish, the school district shall administer a ~~[the]~~ Spanish ~~[version of the]~~ TEA-approved oral language proficiency test ~~[that was administered in English]~~. If a TEA-approved language proficiency test is not available in the primary ~~[the home]~~ language of the student ~~[is other than Spanish]~~, the school district shall determine the student's level of proficiency using informal oral language assessment measures.

(e) ~~(c)~~ All of the ~~[oral]~~ language proficiency testing shall be administered by professionals or paraprofessionals who are proficient in the language of the test and trained in the language proficiency testing requirements of the test publisher.

~~(d) The grade levels and the scores on each test which shall identify a student as limited English proficient shall be established by TEA. The commissioner of education shall review the approved list of tests, grade levels, and scores annually and update the list.~~

~~(e) Students with a language other than English shall be administered the required oral language proficiency test within four weeks of their enrollment. Norm-referenced assessment instruments, however, may be administered within the established norming period.~~

(f) For entry into a bilingual education or ESL ~~[English as a second language]~~ program, a student shall be identified as an English ~~[language]~~ learner using the following criteria.

(1) In prekindergarten through Grade 1, the student's score on the English oral language proficiency test is below the level designated for indicating ~~[limited]~~ English proficiency ~~[under subsection (d) of this section]~~.

(2) At Grades 2-12:

(A) the student's score on the English oral language proficiency test is below the level designated for indicating ~~[limited]~~ English proficiency ~~[under subsection (d) of this section]~~; and

(B) the student's score on the reading and language arts sections of the TEA-approved norm-referenced measure at his or her grade level is below the 40th percentile; ~~[or]~~

~~(C) the student's ability in English is so limited that the administration, at his or her grade level, of the reading and language arts sections of a TEA-approved norm-referenced assessment instrument or other test approved by TEA is not valid.~~

~~(3) In the absence of data required in paragraph (2)(B) of this subsection, evidence that the student is not academically successful as defined in subsection (j) of this section is required.~~

~~(4) The admission review and dismissal (ARD) committee in conjunction with the language proficiency assessment committee shall determine an appropriate assessment instrument and designated level of performance for indicating limited English proficiency as required under subsection (d) of this section for students for whom those tests would be inappropriate as part of the individualized education program (IEP). The decision for entry into a bilingual education or English as a second language program shall be determined by the ARD committee in conjunction with the language proficiency assessment committee in accordance with § 89.1220(g) of this title (relating to Language Proficiency Assessment Committee).~~

(g) A student shall be identified as an English learner if the student's ability in English is so limited that the English oral language proficiency or norm-referenced assessments described in subsection (c) of this section cannot be administered.

(h) The language proficiency assessment committee in conjunction with the admission, review, and dismissal (ARD) committee shall identify a student as an English learner if the student's ability in English is so limited or the student's disabilities are so severe that the English oral language proficiency or norm- referenced assessments described in subsection (c) of this section cannot be administered. The decision for entry into a bilingual education or ESL program shall be determined by the language proficiency assessment committee in conjunction with the ARD committee in accordance with §89.1220(f) of this title (relating to Language Proficiency Assessment Committee).

~~(g) Within 20 school days of their initial enrollment in the school district, students shall be identified as English language learners and enrolled into the required bilingual education or English as a second language program. Prekindergarten and kindergarten students preregistered in the spring shall be identified as English language learners and enrolled in the required bilingual education or English as a second language program within 20 school days of the start of the school year in the fall.]~~

(i) ~~(h)~~ For exit from a bilingual education or ESL ~~[English as a second language]~~ program, a student may be classified as English proficient only at the end of the school year in which a student would be able to participate equally in a general education, all-English instructional program. This determination shall be based upon all of the following:

(1) English proficiency on the state's approved test ~~[TEA-approved tests]~~ that measures ~~[measure]~~ the extent to which the student has developed oral and written language proficiency and specific language skills in English;

(2) passing standard met ~~[satisfactory performance]~~ on the reading assessment instrument under the Texas Education Code (TEC), §39.023(a), or , for students at grade levels not assessed by the aforementioned reading assessment instrument, ~~[a TEA-approved English language arts assessment instrument administered in English, or]~~ a score at or above the 40th percentile on both the English reading and the

English language arts sections of the state's approved ~~[a TEA- approved]~~ norm-referenced standardized achievement instrument ~~[for a student who is enrolled in Grade 1 or 2]~~; and

(3) English proficiency on a TEA-approved criterion-referenced written test ~~[tests when available, or other TEA-approved tests when criterion-referenced tests are not available,]~~ and the results of a subjective teacher evaluation using the state's standardized rubric.

(j) ~~(i)~~ A student may not be exited from the bilingual education or ESL ~~[English as a second language]~~ program in prekindergarten or kindergarten. A school district must ensure that English ~~[language]~~ learners are prepared to meet academic standards required by the TEC, §28.0211.

(k) A student may not be exited from the bilingual education or ESL program if the language proficiency assessment committee has recommended designated supports or accommodations on the state reading or writing assessment instrument.

~~(j) For determining whether a student who has been exited from a bilingual education or English as a second language program is academically successful, the following criteria shall be used at the end of the school year:~~

~~(1) the student meets state performance standards in English of the criterion-referenced assessment instrument required in the Texas Education Code, § 39.023, for the grade level as applicable; and~~

~~(2) the student has passing grades in all subjects and courses taken.~~

~~(k) The ARD committee in conjunction with the language proficiency assessment committee shall determine an appropriate assessment instrument and performance standard requirement for exit under subsection (h) of this section for students for whom those tests would be inappropriate as part of the IEP. The decision to exit a student who receives both special education and special language services from the bilingual education or English as a second language program is determined by the ARD committee in conjunction with the language proficiency assessment committee in accordance with applicable provisions of subsection (h) of this section.~~].

(l) For English learners who are also eligible for special education services, the standardized process for English learner program exit is followed in accordance with applicable provisions of subsection (i) of this section. However, annual meetings to review student progress and make recommendations for program exit must be made in all instances by the language proficiency assessment committee in conjunction with the ARD committee in accordance with §89.1230(b) of this title (relating to Eligible Students with Disabilities). Additionally, the language proficiency committee in conjunction with the ARD committee shall implement assessment procedures that differentiate between language proficiency and disabling conditions in accordance with §89.1230(a) of this title.

(m) For an English learner with significant cognitive disabilities, the language proficiency assessment committee in conjunction with the ARD committee may determine that the state's English language proficiency assessment for exit is not appropriate because of the nature of the student's disabling condition. In these cases, the language proficiency assessment committee in conjunction with the ARD committee may recommend that the student take the state's alternate English language proficiency assessment and shall determine an appropriate performance standard requirement for exit by language domain under subsection (i)(1) of this section;

(n) ~~(l)~~ Notwithstanding §101.101 of this title (relating to Group-Administered Tests), all tests used for the purpose of identification, exit, and placement of students and approved by the TEA must be re-normed at least every eight years.

(o) The grade levels and the scores on each test that shall identify a student as an English learner or exit a student from a bilingual or ESL program shall be established by the TEA. The commissioner of education may review the approved list of tests, grade levels, and scores annually and update the list.

X. LANGUAGE PROFICIENCY ASSESSMENT COMMITTEE (LPAC)

http://programs.esc20.net/default.aspx?name=lpac.framework
http://tea.texas.gov/student.assessment/ell/lpac/
The special education department staff will collaborate with the LPAC representative in the ARD/IEP meeting to develop an appropriate IEP for the LEP special education student.

TAC § 89.1220. Language Proficiency Assessment Committee.

(a) Districts shall by local board policy establish and operate a language proficiency assessment committee. The district shall have on file policy and procedures for the selection, appointment, and training of members of the language proficiency assessment committee(s).

(b) The ~~[In school districts required to provide a bilingual education program, the]~~ language proficiency assessment committee shall include an appropriately certified bilingual educator (for students served through a bilingual education program), an appropriately certified English as a second language (ESL) educator (for students served through an ESL program), a parent of an English learner participating in a bilingual or ESL program, and a campus administrator in accordance with ~~[be composed of the membership described in the]~~ Texas Education Code (TEC), §29.063. ~~[If the school district does not have an individual in one or more of the school job classifications required, the school district shall designate another professional staff member to serve on the language proficiency assessment committee. The school district may add other members to the committee in any of the required categories.]~~

(c) In addition to the three required members of the language proficiency assessment committee, the school district may add other trained members to the committee.

~~(c) In school districts and grade levels not required to provide a bilingual education program, the language proficiency assessment committee shall be composed of one or more profsesional personnel, a campus administrator, and a parent of an English language learner participating in the program designated by the school district.~~

(d) No parent serving on the language proficiency assessment committee shall be an employee of the school district.

(e) A school district shall establish and operate a sufficient number of language proficiency assessment committees to enable them to discharge their duties within four weeks ~~[20 school days]~~ of the enrollment of English ~~[language]~~ learners.

(f) All members of the language proficiency assessment committee, including parents, shall be acting for the school district and shall observe all laws and rules governing confidentiality of information concerning individual students. The district shall be responsible for the orientation and training of all members, including the parents, of the language proficiency assessment committee.

(g) Upon their initial enrollment and at the end of each school year, the language proficiency assessment committee shall review all pertinent information on all English ~~[language]~~ learners identified in accordance with §89.1225(f) of this title (relating to Testing and Classification of Students) or §89.1226 of this title (relating to Testing and Classification of Students, Beginning with School Year 2019-2020) ~~[,]~~ and shall:

(1) designate the language proficiency level of each English ~~[language]~~ learner in accordance with the guidelines issued pursuant to §89.1225(b)-(f) or §89.1226(b)-(f) ~~[§89.1210(b) and (e)]~~ of this title ~~[(relating to Program Content and Design)]~~;

(2) designate the level of academic achievement of each English ~~[language]~~ learner;

(3) designate, subject to parental approval, the initial instructional placement of each English ~~[language]~~ learner in the required program;

(4) facilitate the participation of English ~~[language]~~ learners in other special programs for which they are eligible while ensuring full access to the language program services required under the TEC, §29.053 ~~[provided by the school district with either state or federal funds]~~; and

(5) reclassify ~~[classify]~~ students, at the end of the school year only, as English proficient in accordance with the criteria described in §89.1225(i) or §89.1226(i) ~~[§89.1225(h)]~~ of this title ~~[, and recommend their exit from the bilingual education or English as a second language program]~~.

(h) The language proficiency assessment committee shall give written notice to the student's parent or guardian, advising that the student has been classified as an English learner and requesting approval to place the student in the required bilingual education or ESL program not later than the 10th calendar day after the date of the student's classification in accordance with TEC, §29.056. The notice shall include information about the

benefits of the bilingual education or ESL program for which the student has been recommended and that it is an integral part of the school program.

(i) ~~(h)~~ Before the administration of the state criterion-referenced test each year, the language proficiency assessment committee shall determine the appropriate assessment option for each English ~~[language]~~ learner as outlined in Chapter 101, Subchapter AA, of this title (relating to Commissioner's Rules Concerning the Participation of English Language Learners in State Assessments).

~~(i) The language proficiency assessment committee shall give written notice to the student's parent advising that the student has been classified as an English language learner and requesting approval to place the student in the required bilingual education or English as a second language program. The notice shall include information about the benefits of the bilingual education or English as a second language program for which the student has been recommended and that it is an integral part of the school program.]~~

(j) Pending parent approval of an English ~~[language]~~ learner's entry into the bilingual education or ESL program ~~[English as a second language]~~ recommended by the language proficiency assessment committee, the school district shall place the student in the recommended program ~~[, but may count only English language learners with parental approval for the bilingual education allotment]~~. Only English learners with parent approval who are receiving services will be included in the bilingual education allotment.

(k) The language proficiency assessment committee shall monitor the academic progress of each student who has met criteria for exit in accordance with TEC, §29.056(g), for the first two years after reclassification. If the student earns a failing grade in a subject in the foundation curriculum under TEC, §28.002(a)(1), during any grading period in the first two school years after the student is reclassified, the language proficiency assessment committee shall determine, based on the student's second language acquisition needs, whether the student may require intensive instruction or should be reenrolled in a bilingual education or special language program. In accordance with TEC, §29.0561, the language proficiency assessment committee shall review the student's performance and consider.

(1) the total amount of time the student was enrolled in a bilingual education or special language program;

(2) the student's grades each grading period in each subject in the foundation curriculum under TEC, §28.002(a)(1);

(3) the student's performance on each assessment instrument administered under TEC, §39.023(a) or (c);

(4) the number of credits the student has earned toward high school graduation, if applicable; and

(5) any disciplinary actions taken against the student under TEC, Chapter 37, Subchapter A (Alternative Settings for Behavior Management).

~~(k) The language proficiency assessment committee shall monitor the academic progress of each student who has exited from a bilingual or English as a second language program during the first two years after exiting in accordance with the TEC, §29.0561.~~

(l) The student's permanent record shall contain documentation of all actions impacting the English [language] learner.

(1) Documentation shall include:

(A) the identification of the student as an English ~~[language]~~ learner;

(B) the designation of the student's level of language proficiency;

(C) the recommendation of program placement;

(D) parental approval of entry or placement into the program;

(E) the dates of entry into, and placement within, the program;

(F) assessment information as outlined in Chapter 101, Subchapter AA, of this title;

(G) additional instructional interventions provided to address the specific language needs of the student ~~[students to ensure adequate yearly progress]~~;

(H) the date of exit from the program and parental approval; ~~[and]~~

(I) the results of monitoring for academic success, including students formerly classified as English ~~[language]~~ learners, as required under the TEC, §29.063(c)(4) ; and

(J) the home language survey.

(2) Current documentation as described in paragraph (1) of this subsection shall be forwarded in the same manner as other student records to another school district in which the student enrolls.

(m) A school district may identify, exit, or place a student in a program without written approval of the student's parent or guardian if:

(1) the student is 18 years of age or has had the disabilities of minority removed;

(2) the parent or legal guardian provides approval through a phone conversation or e-mail that is documented in writing and retained; or

~~(2) reasonable attempts to inform and obtain permission from a parent or guardian have been made and documented;]~~

~~(3) [approval is obtained from:]~~

(3) an adult who the school district recognizes as standing in parental relation to the student provides written approval. This may include ~~[, including]~~ a foster parent or employee of a state or local governmental agency with temporary possession or control of the student. ~~[; or]~~

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Section 2. - FULL INDIVIDUAL AND INITIAL EVALUATION

I. INITIAL EVALUATIONS

§300.301 Initial evaluations.

(a) General. The Wood County SSA must conduct a full and individual initial evaluation, in accordance with §§300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part.

(b) Request for initial evaluation. Consistent with the consent requirements in §300.300, either a parent of a child, or the Wood County SSA, may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(c) Procedures for initial evaluation. The initial evaluation--

(1) (i) Must be conducted within 60 days of receiving parental consent for the evaluation; or

(ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and

(2) Must consist of procedures--

(i) To determine if the child is a child with a disability under §300.8; and

(ii) To determine the educational needs of the child.

(d) Exception. The timeframe described in paragraph (c)(1) of this section shall not apply to WCSESSA if--

(1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under §300.8.

WCSESSA evaluation staff will provide clear documentation of the repeated failure or refusal.

(e) The exception in paragraph (d)(2) of this section applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed. (Authority: 20 U.S.C. 1414(a))

For an Initial Evaluation : The WCSESSA will complete a comprehensive full and individual evaluation for the initial evaluation of a student and not rely solely on a review of existing evaluation data.

Revoked Consent for Special Education and Related Services If a parent has revoked consent for services and later requests to re-enroll the student, the WCSESSA must treat this as a request for an initial evaluation. However, depending on the data available, a new evaluation may not always be required. An initial evaluation requires a review of existing evaluation data that includes classroom based, local, or State assessments, and classroom based observations by teachers and related services providers. On the basis of that review and input from the child's parents, the IEP Team and other qualified professionals must identify what additional data, if any, are needed to determine whether the child is a child with a disability and the educational needs of the child. Therefore, WCSESSA may not always have to expend resources on a "new" initial evaluation.

TEC §29.004. FIE Timeline.

(a) A written report of a full individual and initial evaluation of a student for purposes of special education services shall be completed as follows, except as otherwise provided by this section:

(1) not later than the 45th school day following the date on which the school district, in accordance with 20 U.S.C. Section 1414(a), as amended, receives written consent for the evaluation, signed by the student'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

(2) 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.

(a-1) 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 30 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 signed by a student's parent or legal guardian less than 35 school days before the last instructional day of the school year or if the district receives the written consent at least 35 but less than 45 school days before the last instructional day of the school year but the student is absent from school during that period on three or more days, Subsection (a)(1) applies to the date the written report of the full individual and initial evaluation is required.

(a-2) For purposes of this section, "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 for purposes of this section.

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

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

(c) 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 U.S.C. Section 1415(b).

SECTION 2. Section 29.004, Education Code, as amended by this Act, applies to completion of a report of a full individual and initial evaluation of a public school student for purposes of special education services only as to an initial evaluation performed on or after September 1, 2013.

For an Initial Evaluation: If the student moves from one campus to another within our district, the timelines still apply.

TAC §89.1011. Full Individual and Initial Evaluation.

(a) Referral of students for a full individual and initial evaluation for possible special education services must be a part of the WCSESSA'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; response to evidence-based ~~scientific, research-based~~ intervention; and other academic or behavior support services. If the student continues to experience difficulty in the general classroom after the provision of interventions, district personnel must refer the student for a full individual and initial evaluation. This referral for a full individual and 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.

(b) If a parent submits 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 school district must, not later than the 15th school day after the date the district receives the request:

(1) provide the parent with prior written notice of its proposal to conduct an evaluation consistent with 34 Code of Federal Regulations (CFR), §300.503; a copy of the procedural safeguards notice required by 34 CFR, §300.504; and an opportunity to give written consent for the evaluation; or

(2) provide the parent with prior written notice of its refusal to conduct an evaulation consistent with 34 CFR, §300.503, and a copy of the procedural safeguards notice required by 34 CFR, §300.504.

(c) Except as otherwise provided in this section, a written report of a full individual and initial evaluation of a student must be completed as follows:

(1) not later than the 45th school day following the date on which the school district receives written consent for the evaluation from the student's parent, except that if a student has been absent from school during that period on three or more school 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

(2) 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 from the student's parent.

(d) The admission, review, and dismissal (ARD) committee must make its decisions regarding a student's initial eligibility determination and, if appropriate, individualized education program (IEP) and placement within 30 calendar days from the date of the completion of the written full individual and initial evaluation report. If the 30th day falls during the summer and school is not in session, the student's ARD committee has until the first day of classes in the fall to finalize decisions concerning the student's initial eligibility determination, IEP, and placement, unless the full individual and initial evaluation indicates that the student will need extended school year services during that summer.

(e) Notwithstanding the timelines in subsections (c) and (d) of this section, if the school district received the written consent for the evaluation from the student's parent at least 35 but less than 45 school days before the last instructional day of the school year, the written report of a full individual and initial evaluation of a student must be provided to the student's parent not later than June 30 of that year. The student's ARD committee must meet not later than the 15th school day of the following school year to consider the evaluation. If, however, the student was absent from school three or more days between the time that the school district received written consent and the last instructional day of the school year, the timeline in subsection (c)(1) of this section applies to the date the written report of the full individual and initial evaluation is required.

(f) If a student was in the process of being evaluated for special education eligibility by a school district and enrolls in another school district before the previous school district completed the full individual and initial evaluation, the new school district must coordinate with the previous school district as necessary and as expeditiously as possible to ensure a prompt completion of the evaluation in accordance with 34 CFR, §300.301(d)(2) and (e) and §300.304(c)(5). The timelines in subsections (c) and (e) of this section do not apply in such a situation if:
(1) the new school district is making sufficient progress to ensure a prompt completion of the evaluation; and
(2) the parent and the new school district agree to a specific time when the evaluation will be completed.

(g) For purposes of subsections (b), (c), and (e) of this section, 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.

(h) For purposes of subsections (c)(1) and (e) of this section, a student is considered absent for the school day if the student is not in attendance at the school's official attendance taking time or at the alternate attendance taking time set for that student. A student is considered in attendance if the student is off campus participating in an activity that is approved by the school board and is under the direction of a professional staff member of the school district, or an adjunct staff member who has a minimum of a bachelor's degree and is eligible for participation in the Teacher Retirement System of Texas.

For purposes of 89.1011(b) in addition to the Special Education Director, a district administrative employee is considered to be the local campus principal or assistant principal where a student attends.

§300.15 Evaluation. Evaluation means procedures used in accordance with §§300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. (Authority: 20 U.S.C. 1414(a)—(c))

§300.302 Screening for instructional purposes is not evaluation.
The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services. (Authority: 20 U.S.C. 1414(a)(1)(E))
This type of screening may occur without obtaining informed parental consent because it is not considered an evaluation for purposes of determining eligibility for special education. The WCSESSA will determine person(s) considered a "specialist". The term "instructional strategies for curriculum implementation" is generally used to refer to strategies a teacher may use to more effectively teach children. 71 Fed Reg 46639 (August 14, 2006)

II. RE-EVALUATIONS

§300.303 Reevaluations.

(a) General. The WCSESSA must ensure that a reevaluation of each child with a disability is conducted in accordance with §§300.304 through 300.311 — *(found in this FIE Section)*

(1) If the WCSESSA determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(2) If the child's parent or teacher requests a reevaluation.

(b) Limitation. A reevaluation conducted under paragraph (a) of this section--

(1) May occur not more than once a year, unless the parent and the WCSESSA agree otherwise; and

(2) Must occur at least once every 3 years, unless the parent and the WCSESSA agree that a reevaluation is unnecessary. (Authority: 20 U.S.C. 1414(a)(2))

The review of existing evaluation data (REED) is part of the reevaluation process and the WCSESSA is not required to obtain parental consent before reviewing existing data as part of an evaluation or reevaluation. (Feb. 6, 2007, OSEP Letter to Anonymous)

DNQ – Did not Qualify: The WCSESSA will present the evaluation information to the parent and conduct the IEP meeting to document findings and next steps recommended by the committee.

Based on the findings, the WCSESSA appraisal staff will determine if an ARD/IEP meeting needs to be scheduled to review the information or if the information can be reviewed at the upcoming annual ARD meeting.

1. *If the reevaluation is a scheduled 3 year reevaluation and change is noted that would require discussion of eligibility or services, the ARD/IEP meeting will be scheduled within 30 calendar days from the date of the completion of the written full and individual evaluation report, unless otherwise noted in a previous ARD meeting. If the 30th day falls during the summer and school is not in session, the ARD committee shall have until the first week of classes in the fall to meet, unless the full and individual initial evaluation indicates that the student will need extended school year (ESY) services during that summer.*
2. *If the reevaluation is a scheduled 3 year reevaluation and no change is noted that would require discussion of eligibility or services, the ARD/IEP meeting may be conducted at the regular annual ARD scheduled timeframe.*
3. *If the reevaluation is for additional assessments requested by the ARD to determine behavioral, related services such as therapies or other needs and change is noted that would require discussion of eligibility or services, the ARD/IEP meeting will be scheduled within 30 calendar days from the date of the completion of the written full and individual evaluation report, unless otherwise noted in a previous ARD meeting.*

III. EVALUATION PROCEDURES

§300.304 Evaluation procedures.

(a) Notice. The WCSESSA will provide notice to the parents of a child with a disability, in accordance with §300.503, that describes any evaluation procedures the WCSESSA proposes to conduct. *(see Section 7 for Notice and Consent including Consent for Certain Psychologicals)*

(b) Conduct of evaluation. In conducting the evaluation, the WCSESSA will --

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining--

(i) Whether the child is a child with a disability under §300.8; and

(ii) The content of the child's 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 measure or assessment as the sole criterion for determining whether a child is a child with a disability and for 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.

c) Other evaluation procedures. The Wood County SSA must ensure that--

(1) Assessments and other evaluation materials used to assess a child under this part--

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

(iii) Are used for the purposes for which the assessments or measures are valid and reliable;

(iv) Are administered by trained and knowledgeable personnel; and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

(2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

(5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same academic year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with §300.301 (d)(2) and (e), to ensure prompt completion of full evaluations.

(6) In evaluating each child with a disability under §§300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

The WCSESSA ensures evaluation procedures are followed by hiring qualified, certified and licensed professionals. Continual training is offered through a variety of resources including but not limited to the following: the education service center, the TEA TETN, state wide conferences, and legal academies. In addition, at each annual job evaluation, any areas needing improvement or additional training are identified and documented as an area for professional growth. The special education office (and the office of personnel) maintains files of additional training attended.

§300.310 Observation.

(a) The WCSESSA must ensure that the child is observed in the child's learning environment, including the regular classroom setting, to document the child's academic performance and behavior in the areas of difficulty.

(b) The group described in §300.306(a)(1), in determining whether a child has a specific learning disability, must decide to—

(1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or

(2) Have at least one member of the group described in §300.306(a)(1) conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with §300.300(a), is obtained.

(c) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

Parental consent is not required for observations conducted as part of routine classroom instruction and monitoring of the child's performance before the child is referred for an evaluation.

TEC § 38.003. Screening and Treatment for Dyslexia and Related Disorders.

Current TEA Dyslexia Handbook: https://tea.texas.gov/academics/dyslexia/

(a) Students enrolling in public schools in this state shall be screened or tested, as appropriate, for dyslexia and related disorders at appropriate times in accordance with a program approved by the State Board of Education. The program must include screening at the end of the school year of each student in kindergarten and each student in the first grade.

(b) In accordance with the program approved by the State Board of Education, the board of trustees of each school district shall provide for the treatment of any student determined to have dyslexia or a related disorder.

(b-1) Unless otherwise provided by law, a student determined to have dyslexia during screening or testing under Subsection (a) or accommodated because of dyslexia may not be rescreened or retested for dyslexia for the purpose of reassessing the student's need for accommodations until the district reevaluates the information obtained from previous screening or testing of the student.

(c) The State Board of Education shall adopt any rules and standards necessary to administer this section.

(d) In this section:

(1) "Dyslexia" means a disorder of constitutional origin manifested by a difficulty in learning to read, write, or spell, despite conventional instruction, adequate intelligence, and sociocultural opportunity.

(2) "Related disorders" includes disorders similar to or related to dyslexia, such as developmental auditory imperception, dysphasia, specific developmental dyslexia, developmental dysgraphia, and developmental spelling disability.

For additional state rules on Dyslexia, please see Section 1. TAC §74.28. Students with Dyslexia and Related Disorders.

Current TEA Dyslexia Handbook: https://tea.texas.gov/academics/dyslexia/

TEC § 38.016. Psychotropic Drugs and Psychiatric Evaluations or Examinations.

(a) In this section:

(1) "Parent" includes a guardian or other person standing in parental relation.

(2) "Psychotropic drug" means a substance that is:

(A) used in the diagnosis, treatment, or prevention of a disease or as a component of a medication; and

(B) intended to have an altering effect on perception, emotion, or behavior.

(b) A school district employee may not:

(1) recommend that a student use a psychotropic drug; or

(2) suggest any particular diagnosis; or

(3) use the refusal by a parent to consent to administration of a psychotropic drug to a student or to a psychiatric evaluation or examination of a student as grounds, by itself, for prohibiting the child from attending a class or participating in a school related activity.

(c) Subsection (b) does not:

(1) prevent an appropriate referral under the child find system required under 20 U.S.C. Section 1412, as amended; or

(2) prohibit a school district employee who is a registered nurse, advanced nurse practitioner, physician, or certified or appropriately credentialed mental health professional from recommending that a child be evaluated by an appropriate medical practitioner; or

(3) prohibit a school employee from discussing any aspect of a child's behavior or academic progress with the child's parent or another school district employee.

(d) The board of trustees of each school district shall adopt a policy to ensure implementation and enforcement of this section.

(e) An act in violation of Subsection (b) does not override the immunity from personal liability granted in Section 22.0511 or other law or the district's sovereign and governmental immunity.

IV. REVIEW OF EXISTING EVALUATION DATA (REED)

§300.305 Additional requirements for evaluations and reevaluations.

(a) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must--

(1) Review existing evaluation data on the child, including—

(i) Evaluations and information provided by the parents of the child;

(ii) Current classroom-based local or State assessments, and classroom-based observations; and

(iii) Observations by teachers and related services providers; and

(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine--

(i) (A) Whether the child is a child with a disability, as defined in §300.8, and the educational needs of the child; or

(B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;

(ii) The present levels of academic achievement and related developmental needs of the child;

(iii) (A) Whether the child needs special education and related services; or

(B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

(b) Conduct of review. The group described in paragraph (a) of this section may conduct its review without a meeting. *In the WCSESSA we will review existing data and plan for any necessary reevaluation during an IEP meeting because all of the required members of the group will be in attendance.*

(c) Source of data. The WCSESSA must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.

(d) Requirements if additional data are not needed.

(1) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the WCSESSA must notify the child's parents of—-

(i) That determination and the reasons for the determination; and

(ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.

(2) The WCSESSA is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents.

(e) Evaluations before change in placement.

(1) Except as provided in paragraph (e)(2) of this section, the WCSESSA must evaluate a child with a disability in accordance with §§300.304 through 300.311 before determining that the child is no longer a child with a disability.

(2) The evaluation described in paragraph (e)(1) of this section is not required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.

(3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, the WCSESSA must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals. (Authority: 20 U.S.C. 1414(c))

The group of qualified professionals in the WCSESSA include the same members that are required for attendance is the ARD / IEP Team.

V. DETERMINATION OF ELIGIBILITY

§300.306 Determination of eligibility.

(a) General. Upon completion of the administration of assessments and other evaluation measures-

(1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in §300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and

(2) The Wood County SSA provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

The copy of the evaluation report will be provided to the parent by the appraisal staff if possible, prior to the ARD/IEP meeting. It is important to review the information with the parent, therefore, if the report cannot be provided prior to the ARD meeting, it will be provided at the meeting. If the parent is not in attendance, the copy will be mailed to the parent with an opportunity to discuss the report on the phone or in a conference.

(b) Special rule for eligibility determination. A child must not be determined to be a child with a disability under this part--

(1) If the determinant factor for that determination is--

(i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA) "as such section was in effect on the day before the date of enactment of the Every Student Succeeds Act (December 9, 2015); *see below*

(ii) Lack of instruction in math; or

(iii) Limited English proficiency; and

(2) If the child does not otherwise meet the eligibility criteria under §300.8(a).

(c) Procedures for determining eligibility and educational need.

(1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under §300.8, and the educational needs of the child, the WCSESSA must--

(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, as well as recommendations about the child's physical condition, social or cultural background, and adaptive behavior; and

(ii) Ensure that information obtained from all of these sources is documented and carefully considered.

(2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§300.320 through 300.324.

§300.306(b)(1) - referring to (section 1208 of ESEA – NCLB *from above* **) are the Reading components meaning explicit and systematic instruction in**

(A.) phonemic awareness;

(B.) phonics;

(C.) vocabulary development;

(D.) reading fluency, including oral reading skills; and

(E.) reading comprehension strategies.

Following the required timelines, the ARD Committee will meet to review the FIE and determine if the child is a child with a disability and if there is an educational need in order for the student to be eligible for special education services.

VI. ADDITIONAL PROCEDURES FOR IDENTIFYING CHILDREN WITH SPECIFIC LEARNING DISABILITIES

For all additional guidelines specific to Learning Disability Eligibility, please see Section 3. - Disability Criteria. Section 3 of this manual will list both the Federal Regulations below and the new state TAC §89.1040(c)(9) Learning Disability Eligibility Criteria that will be followed by the WCSESSA.

§300.307 Specific learning disabilities.
§300.308 Additional group members.
§300.309 Determining the existence of a specific learning disability.
§300.310 Observation.
§300. 311 Specific documentation for the eligibility determination.

VII. WRITTEN EVALUATION REPORTS (including Related Service Reports)

TAC §89.1011. Full Individual and Initial Evaluation.

(c) Except as otherwise provided in this section, a written report of a full individual and initial evaluation of a student must be completed as follows:

(1) not later than the 45th school day following the date on which the school district receives written consent for the evaluation from the student's parent, except that if a student has been absent from school during that period on three or more school 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

(2) 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 from the student's parent.

For TAC §89.1011 in its entirety, see I. EVALUATION - in this Section 2.

A written evaluation report for any disability or eligibility for related services will include all of the requirementsin §89.1011 (c) and §300.311 (a – b) and documented on the district forms. In addition, specific requirements for each specific disability category found in Section 3-Disability Criteria will also be documented in the written evaluation report.

Assessment protocols will be filed in a separate folder alongside the student eligibility folder and will not be filed with the written evaluation report. Label with student name and "Protocols". Parents or adult students have access to educational records including a review of test protocols. Please contact the school's Educational Diagnostician or the Director of Special Education in writing in order to review test protocols. Arrangements will be made to have the appropriate professional review the protocol with the parent or adult student.

§300. 311 Specific documentation for the eligibility determination.

(a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required by §300.306(a)(2), must include a statement of--

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination, including an assurance that the determination has been made in accordance with §300.306(c)(1);

(3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;

(4) The educationally relevant medical findings, if any;

(5) Whether --

(i) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with §300.309(a)(1); and

(ii) (A) The child does not make sufficient progress to meet age or State-approved grade-level standards consistent with § 300.309(a)(2)(i); or

(B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards or intellectual development consistent with § 300.309(a)(2)(ii).

(6) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation, emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and

(7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention--

(i) The instructional strategies used and the student-centered data collected;

(ii) The documentation that the child's parents were notified about—

(A) The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

(B) Strategies for increasing the child's rate of learning; and

(C) The parents' right to request an evaluation.

(b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement

presenting the member's conclusions. (Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

Contract evaluation personnel (which includes personnel who complete evaluations for Independent Educational Evaluations) must provide assessment results, recommendations and report to WCSESSA prior to reviewing and/or sending information to parents.

VIII. EVALUATION OF LANGUAGE, PHYSICAL, SOCIOLOGICAL, AND OTHER CONDITIONS

A. Language Dominance

The evaluation team will first determine the student's dominant language most proficient method of communication (expressively and receptively). The student's dominant language is the language in which the student is most proficient. This determination may be made by formal or informal evaluation. Evaluation instruments must be administered in the student's dominant language (native language or other mode of communication unless it is clearly not feasible to do so). If the primary language of the home is not English, the student will be evaluated in his/her dominant language. Documentation will be Oral Language Proficiency scores, the LPAC report or a description of procedures used to ensure the student was evaluated in his/her dominant language when the examiner is not proficient in that language. Where no bilingual examiner is available, an interpreter may be used. Interpreters will be adequately trained.

B. Language Proficiency

The evaluation team must determine the student's most proficient method of communication. The language proficiency information must indicate the student's skill in understanding and using both receptive and expressive domains, such as oral and written language, reading comprehension, and listening comprehension, when appropriate. Proficiency in both English and the other language(s) must be addressed for Limited English Proficient (LEP) students. (see guidelines in the Referral section 1 for ELL students and coordination with the LPAC to differentiate proficiency and disability)

TAC §89.1230. Eligible Students with Disabilities**.** (language proficiency)

(a) WCSESSA will implement assessment procedures which differentiate between language proficiency and handicapping conditions in accordance with Subchapter AA of this chapter (relating to Special Education Services), and will establish placement procedures which ensure that placement in a bilingual education or English as a second language program is not refused solely because the student has a disability.

C. Physical

The evaluation of an individual's physical factors (including health, vision, hearing, and psycho-motor abilities) must consist of an examination of physical conditions that directly affect the student's ability to profit from the educational process. A general medical examination will be required only when specified by eligibility criteria or when abnormal physical factors have been identified as part of the evaluation of physical factors. The health information collected during the referral process will be sufficient if a complete medical examination is not required by specific eligibility criteria and if there are no indications of need for further physical evaluation.

When requesting a medical examination these steps are required:

1. *Evaluation personnel are to obtain a Notice of Release of Confidential Information release of confidential information from the parents.*
2. *Submit the following forms to intervention services personnel designated responsible for securing contract services:*
   a. *Notice of Release of Confidential Information with contact information, signed by parent*
   b. *Eligibility form(s) for area of suspected disability*
   c. *And obtain approval for assessment*
3. *Intervention personnel will contact appropriate service providers. Intervention personnel will then contact evaluation personnel to notify parent.*

D. Emotional/Behavioral

The evaluation of an individual's emotional and behavioral factors will consist of formally or informally identifying those characteristics manifested in in-school or out-of-school behavior, or both, which may influence learning. The evaluation will include behaviors relative to the disability that may affect educational placement, programming, or discipline. Adaptive behavior of all students must be considered to some degree, formal measures are required only when establishing a diagnosis of intellectual disability.

E. Sociological

The evaluation of an individual's sociological variables must consist of identifying the child's family and community environmental situation influencing learning and behavioral patterns. Students will not be eligible for special education if the only deficiencies identified are directly attributable to a different cultural lifestyle or to their not having had educational opportunities.

F. Cognitive

The evaluation of an individual's cognitive functioning must include an evaluation of verbal ability or performance or both. Cognitive functioning should be the last factor assessed, since the student's performance in this area should be analyzed and interpreted in light of all the other data. While the adaptive behavior of all students must be considered to some degree, formal measures of adaptive behavior will be required only when a student is being assessed for intellectual disability. Intelligence must always be addressed. An informal evaluation of cognitive ability may be used to determine cognitive functioning as a part of eligibility for certain disabilities at the discretion of the evaluation team.

IX. EVALUATION OF LEARNING COMPETENCIES (Academic Achievement and Functional Performance)

The evaluation report will include:

A. criterion-referenced or curriculum-referenced assessments designed to aid in the development of the student's IEP; (include any district wide and state testing, benchmarks, etc.)

B. information about the student's strengths and weaknesses; and

C. the specific modifications of instructional content, accommodations, methods and/or materials required by the student to achieve and maintain satisfactory progress, including those that can only be provided through special education services, and those adaptations necessary for the student's progress in general classes and other special and compensatory education programs.

See also Section IV. previously for ***§300.305. Additional requirements for evaluations and reevaluations***

X. ASSISTIVE TECHNOLOGY DEVICES AND SERVICES

§300.5 Assistive technology device. 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 child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

§300.6 Assistive technology service. Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes-

(a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and
(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child. (Authority: 20 U.S.C. 1401(2))

§300.105 Assistive technology; proper functioning of hearing aids.

(a) The WCSESSA must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §§300.5 and 300.6, respectively, are made available to a child with a disability if required as a part of the child's--
(1) Special education under §300.39;
(2) Related services under §300.34; or
(3) Supplementary aids and services under §§300.42 and 300.114(a)(2)(ii).
(b) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive FAPE. (Authority: 20 U.S.C. 1412(a)(1), 1412(a)(12)(B)(i))

Click link to review the Assistive Technology Region 4 ESC Leadership Function/Project which TEA supports. www.texasat.net http://www.texasat.net/

Each student assessed for determination of a disability will be assessed for assistive technology needs.

The assistive technology evaluation team may include any of the following professionals: Occupational Therapist, Physical Therapist, Speech Pathologist, Diagnostician, Teacher of Visually Impaired, others as needed. Additional information in Referral section.

XI. SPECIAL PROVISIONS

Any area assessed below requires review of existing evaluation data by the student's ARD/IEP Committee or the request may have come from the initial referral.

A. Adapted Physical Education

Adapted physical education evaluations will be administered by appropriately trained physical education or special education personnel. A written report should be completed to address the student's physical strengths and weaknesses and recommendations for specific services to be considered by the ARD/IEP committee. (see also Instructional Arrangements Section 5)

B. Atlantoaxial Dislocation Condition

Students identified as having Down's Syndrome are at-risk for having a condition of the neck that necessitates restriction of physical education activities. This condition is called Atlantoaxial Dislocation Condition (ADC) or Atlantoaxial Instability. In order to determine the presence or absence of this condition, x-rays are required beginning at approximately three years of age or as soon as students enroll. Diagnosticians will notify parents of the need for Notice of Release of Confidential Information

C. Attention Deficit Disorder (ADD-ADHD) see also Section 3 – Disability Criteria for OHI

Remember when conferencing with parent:
1. *discuss the educational needs with parent and possible strategies*
2. *discuss possible need for further evaluation,*
3. *discuss other information the manner in which testing would be conducted (time lines, etc),*
4. *the general education staff does not provide the parent a copy of the OHI Disability Report for the physician*

After the review of existing data is completed:
1. *appropriate evaluation measures will be administered,*
2. *If RtI Committee notes concerns regarding attention and requests an evaluation be completed to review possible eligibility for the student under Other Health Impairment due to ADD, it is the Campus Diagnostician's responsibility to request a psychological evaluation after review of records at the discretion of an LSSP. Campus Diagnostician and LSSP will collaborate to review student's possible eligibilities.*

If OHI is pursued:
1. *the Physician's Report form must be completed by a medical doctor,*
2. *the medical form is for diagnosis only - we do not pursue medication,*
3. *ask if the parent has a doctor who knows the student,*
4. *the medical doctor is just one member of the multidisciplinary team.*

Caution: *Remember that a student may be diagnosed by a physician as having ADD or ADHD but the student may not necessarily have an educational need for special education services. Determination of educational need is made by the ARD/IEP Committee considering all data. Needs of some students may be addressed by the local campus Section 504 committee or classroom strategies. If you have any questions, please review with your WCSESSA campus personnel or call the WCSESSA special education office.*

D. Auditory Impairment

When considering students who have auditory impairments, a professional certified in the education of students with auditory impairments will be assigned to assist in:
1. *determining appropriate areas of evaluation;*
2. *developing or determining appropriate evaluation techniques;*
3. *conducting evaluations when appropriate; and*

4. interpreting data to ensure consideration and understanding of the educational, psychological, and social implications of the disability.

Birth – 2 years or Deaf-Blind:

When considering students from birth through age two that have auditory impairments, or students who are deaf-blind, a teacher of infants who have auditory impairments or a teacher of students who are deaf-blind, as appropriate, may perform the evaluation specified above.

Click link to review the Region 11 ESC Deaf, Hard of Hearing Statewide Function/Project which TEA supports.
https://texasdeafed.org/

E. Autism

The team of professionals that completes the evaluation process for autism will include a psychologist or LSSP, a speech/language pathologist, a diagnostician, and any other professional appropriate. The parent is also a critical member of the team.

Click link to review the Region 13 ESC Autism Statewide Leadership Function/Project which TEA supports.
http://www.txautism.net/evaluations

F. Evaluation of Very Young or Students with Severe Disabilities

If the evaluation team cannot test these students in accordance with the guidelines listed under the individual evaluation section of this procedure manual, the team must document the rationale for deviating from the standard procedure, as well as, state modifications used and present the results of the evaluation. The written report will specify the nature and extent of the disability. The educational evaluation of such a student may be limited to competency based or criterion referenced measures. Outside evaluations will also be considered.

G. Functional Behavioral Assessment

Functional Behavioral Assessment is completed when a student's behavior impedes educational progress for the student or other students in the classroom. Include the general education teacher in gathering the information below in order to develop the BIP:

1. *target the specific behavior that is impeding learning by clearly defining and describing the observable behavior(s).*
2. *obtain information from a variety of sources including but not limited to: discussions, interviews, records, and direct observation. Also use any standardized instruments if available. Determine duration, frequency, and intensity of any patterns of behavior.*
3. *identify and describe any antecedents - events that logically serve as the stimulus for the behavior.*
4. *identify and describe any consequences - this is the action that is following and causes the student to maintain specific behavior - determine effectiveness of each.*
5. *determine the purpose of the student's behavior - usually to get something, avoid or escape something, or to control the antecedent event.*
6. *describe the relationship of the behavior to the event and provide possible variables that can be changed in the setting or the situation.*
7. *develop the behavioral intervention plan (BIP). Teach alternatives to the behavior and include positive reinforcement along with consequences.*
8. *consistently implement, allow enough time for the BIP to work, and then review as needed.*

Federal Guidelines stipulate required timelines. If the student's ARD committee agrees that there is a need for a functional behavior assessment, the committee may determine that there is enough data to complete the assessment at the ARD. If there is insufficient data to complete the assessment at the ARD, the ARD committee determines the timeline for the assessment(s) to be completed, which may be more than 10 days if warranted.

Click link to review the Region 4 ESC Behavior Support Initiative Statewide Function which TEA supports.
http://www.txbehaviorsupport.org/

H. Homebound or Hospitalized

All students referred for consideration as homebound or hospital need evaluation information that describes the student's functioning in the following areas: health, vision, hearing, social emotional status, general cognitive ability, academic performance, communication, and motor abilities so the ARD/IEP committee can determine eligibility for special education.

TAC §89.63. Any student who is placed in the special education homebound instructional arrangement/setting must meet the following four criteria:

- be eligible for special education and related services as determined by an ARD committee;
- is expected to be confined at home or hospital bedside for a minimum of four consecutive weeks (instruction may, as provided by local district policy, also be provided to chronically ill students who are expected to be confined for any period of time totaling at least four weeks throughout the school year as documented by a physician licensed to practice in the United States);
- be confined for medical reasons only (unless the child is 0 – 5 years of age); and
- a medical condition is documented by a physician licensed to practice in the United States. 19 TAC §89.63(c)(2)(A)

In making eligibility and placement decisions the ARD committee must consider the physician's information. However, the physician's note/information is not the sole determining factor in the committee's decision making process.

General Education Homebound (GEH)
Any general education student should be referred to the local campus GEH committee. For more information see the Student Attendance Accounting Manual: http://tea.texas.gov/index2.aspx?id=25769817607

I. English Learner
See Section 1. and Section 4a. for more information.

§300.27 English Learner. English Learner has the meaning given the term in section 8101 of the ESEA.

(See also Home Language Survey and LPAC in this Referral Section)

1. *For all LEP (Limited English Proficient) Students:*
   - A. *The LPAC report, which must have been completed within the past year, must be included with the referral packet. The student should have been tested in English and Spanish.*
   - B. *If this is a new referral, information will include: Initial referral information, LPAC report, LAS scores or equivalent test, amount of time in ESL, Home Language Survey copy.*
   - C. *If you have planned a reevaluation, this information must be included.*
2. *Speech only referral:*
   - A. *(LANGUAGE) The language proficiency assessment (ex. LAS, IDEA) should be considered with regard to the following:*
     - i. *If the student is proficient in English and has a lower proficiency in a language other than English (LOTE), the normal procedures for the speech pathologist evaluations are followed. Assessment would be conducted in English.*
     - ii. *If the student is proficient in a LOTE and not in English, then following a review of existing data, an assessment would be conducted in a LOTE. To meet eligibility criteria for Speech Impaired the student would have to show deficits in a LOTE (following the same eligibility criteria for SI for WCSESSA). An evaluation in English may still be warranted.*
     - iii. *If the student is barely proficient in both languages, assessment should be completed in the student's dominant language. You may also consult with the Director of WCSESSA.*
     - iv. *If the student is proficient in both languages, assessment should be completed in the student's dominant language.*
   - B. *(ARTICULATION) The articulation evaluation should be considered with regard to the following: Differences cannot be considered true articulation errors when the student pronounces or omits sounds using rules or learned behaviors from a different language or dialect.*

3. *Other Referrals (LD, MR, etc.):*
   - A. *The language evaluation (ex. LAS, IDEA) should be considered with regard to the following:*
     - i. *If the student is proficient in English and has a lower proficiency in a language other than English (LOTE), the normal procedures for the speech pathologist evaluations are followed. Assessment would be conducted in English.*

ii. If the student is proficient in a LOTE and not in English, then following a review of existing data, an assessment would be conducted in a LOTE. To meet eligibility criteria for Speech Impaired the student would have to show deficits in a LOTE (following the same eligibility criteria for SI for WCSESSA). An evaluation in English may still be warranted.

iii. If the student is barely proficient in both languages, assessment should be completed in the student's dominant language. You may also consult with the Director of WCSESSA.

iv. If the student is proficient in both languages, assessment should be completed in the student's dominant language.

B. If the student is not proficient in either language, a bilingual assessment should be requested. The bi-lingual evaluator may provide guidance as to the appropriateness of a full bi-lingual evaluation. Consideration should be given to the following:

i. Students who have been in English speaking schools for less than two years should be given careful consideration relative to referral.

ii. If the student has received English instruction for two or more years and there is no evidence of previous academic instruction in Spanish or another language, the LPAC may recommend testing in English or use of an interpreter.

J. Speech Impairment

For students referred for speech/language suspected disability, the evaluation will be performed and documented by a certified speech and language pathologist, certified speech and hearing therapist, or a licensed speech/language pathologist. All of the areas including evaluation of physical, mental, and emotional conditions and learning competencies will be addressed in the evaluation; however, the depth of the evaluation to be performed for each area is identified in our Speech Therapy Guidelines. The written report of evaluation will include the level of severity of the impairment as determined by our Speech Therapy Guidelines and will state how the communication disorder affects the student's performance in the classroom resulting in an educational need for speech therapy services.

K. Visual Impairment (see also Section 3. DISABILITY and Section 4b)

When considering students who have visual impairments, a professional certified in the education of students with visual impairments will be assigned to assist in:
1. determining appropriate areas of evaluation;
2. developing or determining appropriate evaluation techniques;
3. conducting evaluations when appropriate; and
4. interpreting data to ensure consideration and understanding of the educational, psychological, and social implications of the disability; and
5. collecting appropriate medical documentation.

When considering students from birth through age two that have visual impairments, or students who are deaf-blind, a teacher of infants who have visual impairments or a teacher of students who are deaf-blind, as appropriate, may perform the evaluation specified above.

Click link to review the Region 11 ESC Blind or Visually Impaired Statewide Function/Project which TEA supports. http://www.slsbvitexas.org/site/default.aspx?PageID=1

L. Vocational Evaluation (including FVE)

Special education will collect vocational evaluation data when appropriate. As the ARD/IEP committee begins discussion and planning for entry into the high school curriculum and discusses the graduation plan of the student, vocational evaluation may be determined appropriate. (For information on the Vocational Adjustment Coordination Program see Instructional Arrangements Section.)
1. The ARD/IEP committee may recommend vocational evaluation when:
A. the student has no specific identified skills which are determined necessary for employment, or
B. the student has no idea of vocational opportunities or careers of any interest.
2. Based on ARD/IEP committee recommendation, occupational preparation needs may be reviewed and may include the following:

A. the Full and Individual Evaluation;
B. the current IEP;
C. information about past school performance;
D. work training history; and
E. interviews with student, parent, and teacher(s). The interviews include attitudes, work habits, behaviors, job readiness, work-related skills, and post-school expectations.

3. The assigned special education teacher will explain to parents the purpose of the vocational review. Results of the vocational evaluation may be discussed with the student prior to being filed in the student's special education folder. The results will also be discussed at the annual ARD/IEP committee meeting.
4. If the review of the records in #2. above indicates, additional vocational interest and aptitude evaluation may be recommended by the ARD/IEP committee. The special education teacher and/or educational diagnostician are responsible for sending the Notice and Consent for a Full and Individual Evaluation to the parent prior to the evaluation. Evaluation will begin no earlier than five school days after notification in accordance with WCSESSA guidelines.
5. For students with disabilities whose initial vocational evaluation, does not yield measurable results or sufficient information for planning appropriate occupational preparation, additional vocational evaluation may be required such as: review of work samples, situational evaluations, and work behaviors analysis. Observation, training sites, or other instructional programs and settings may be used to provide part of this data.
6. Situational assessment of students placed in campus-based and community-based job-training options as a part of the student's educational program will be conducted by special education instruction staff on an ongoing basis. Reports will be filed in the teacher's student folder and reviewed at each annual ARD/IEP meeting.

Functional Vocational Evaluation.
The ARD/IEP committee will consider any recommendations as a result of Transition Planning. Transition services means a coordinated set of activities for a student with a disability that includes if appropriate a functional vocational evaluation. If the ARD/IEP committee recommends this, a qualified professional will conduct the evaluation.
1. The evaluation will include but not be limited to: observation in vocational settings, interview with teacher and parents, and other formal or informal evaluations as appropriate.
2. Results of the evaluation including strengths and weaknesses will be addressed in a written report maintained in the eligibility file.

Functional Vocational Evaluation is just one component of transition planning that is included "if appropriate". The IEP committee determines if a functional vocational evaluation is appropriate. It may be necessary if the student cannot determine a career interest area or if it is difficult determining the student strengths and needs. It may be considered appropriate for students
1. who would benefit from the "hands-on" experience afforded by work sampling, observations, situational assessment,
2. difficult to determine career interests or explore careers, and
3. who may need to showcase talents other than those limited to academic classes where they traditionally have been unsuccessful.

- *Functional Vocational Evaluation (FVE) is a systematic assessment process used to identify practical useable career and employment-related information about an individual.*
- *FVE can incorporate multiple formal and informal assessment techniques to observe, describe, measure, and predict vocational potential. A distinctive feature in all FVE's is that FVE includes (and may emphasize) individualized experiential and performance-based opportunities, in natural vocational or work environments.*
- *More important than the type of assessment used is that the process is a systematic method used to collect and organize information. This process may begin early and be quite broad during the middle school years, but becomes increasingly more specific as the student moves closer to graduation. This is not a task that will be done one time only, but rather will be built upon as the student has new experiences and can be documented with data over time.*

This Functional Vocational Evaluation procedure considers and documents the interactions of the student with instructors, peers, and employers. Include:
1. interviews;
2. observation, inventories, surveys, and record reviews; personality and temperament

3. career exploration of student's interests, values, attitudes, and social skills.
4. situational assessment of student's interests, skills, strengths, temperaments; work demands environmental factors abilities, motivation, physical capacity, and work tolerance work habits,
5. training needs;; assistive technology; necessary adaptations and
6. multi-agency planning and assessment.

XII. APPRAISAL PERSONNEL *(see also Personnel in Section 8-Administration)*

§300.156 Personnel qualifications.

(a) General. The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

(b) Related services personnel and paraprofessionals. The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that--

(1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and

(2) Ensure that related services personnel who deliver services in their discipline or profession--

(i) Meet the requirements of paragraph (b)(1) of this section; and

(ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) A llow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.

(c) for remaining portion *see Administrative section 8 of this document*

22 TAC § 465.38. Psychological Services in the Schools. [Excerpt]

This rule acknowledges the unique difference in the delivery of school psychological services in the public schools from psychological services in the private sector. The Board recognizes the purview of the State Board of Education and the Texas Education Agency in safeguarding the rights of public school children in Texas. The mandated multidisciplinary team decision making, hierarchy of supervision, regulatory provisions, and past traditions of school psychological service delivery both nationally and in Texas, among other factors, allow for rules of practice in the public schools which reflect these occupational distinctions from the private practice of psychology.

(1) Definition.

(C) The assessment of emotional or behavioral disturbance, for educational purposes, using psychological techniques and procedures is considered the practice of psychology.

Appraisal/evaluation personnel will review referral data, determine suspected disability, and route the referral to the appropriate special education evaluation staff. Professionals will be assigned to conduct evaluations only in the areas for which they have been trained. Evaluation staff will provide evaluation and educational information to the ARD/IEP committee as needed. WCSESSA evaluation personnel and their responsibilities include:

a. Adapted P.E. teacher or Regional Education Service Center Consultant:

1. administers screening/evaluation for possible adapted physical education services, and

2. completes a written report with recommendations.

b. Auditory Impairments (AI):

Evaluation and services for students with auditory impairments will be provided by appropriately qualified personnel. Personnel from the Regional Day School for the Deaf or other appropriate personnel may be used as needed.

c. Educational Diagnostician:

1. administers cognitive and academic/developmental evaluations;

2. administers evaluations of learning competencies for initial evaluations and re-evaluations;

3. participates on multidisciplinary team evaluations for autistic, learning disabled, multiple disabilities, etc.;

4. assists in evaluation of vocational skills and needs;

5. may serve on the RtI Committee or 504 Committee on assigned campus; and

6. interprets evaluation data orally and in a written report to the ARD/IEP committee.

d. In Home/Parent Trainer:

1. administers screening and evaluation for possible In-Home/Parent Training services.

2. participates on multidisciplinary team evaluations.

3. participates on ARD/IEP committee as appropriate.
4. provide In-Home/Parent Training; and
5. Annually assess student present level of academic achievement and functional performance for updating the student's IEP.

e. Licensed Specialist in School Psychology (LSSP):
1. administers psychological screenings and evaluations;
2. participates on multidisciplinary team evaluations for autistic referrals;
3. develops behavior management plans and consults with staff as needed;
4. participates on ARD/IEP committee as appropriate; and
5. may serve on RtI Committee or 504 Committee on assigned campus, as appropriate.

f. Occupational Therapist/Physical Therapist:
1. administers screening and evaluation for possible OT/PT services, and
2. assures annual medical release is obtained for continuation of services.

g. Psychologist:
1. administers psychological screenings and evaluations;
2. participates on multidisciplinary team evaluations for autistic referrals;
3. develops behavior intervention plans and consults with staff as needed;
4. participates on ARD/IEP committee as needed; and
5. may serve on RtI Committee or 504 Committee on assigned campus, as appropriate.

h. Special Education Teachers:
Annually assess student present level of academic achievement and functional performance to update the student's IEP. This will include the review of the State or district wide assessments. Consideration of any benchmark tests will be used as well. This could also be an informal criterion/curriculum based evaluation such as the CLASS assessment, Brigance, etc. Information for the three year re-evaluation will be provided to the diagnostician and / or ARD/IEP committee for inclusion in the written eligibility report.

i. Speech/Language Pathologist:
1. administers evaluations for all speech impaired referrals;
2. screens or evaluates referrals for oral expression and listening comprehension upon request of educational diagnostician;
3. screens referrals as appropriate upon request;
4. participates on the multidisciplinary team evaluations; and
5. may serve on the RtI Committee or 504 Committee on assigned campus.

j. Visual Impairments (VI):
Evaluations and services for students with visual impairments will be conducted by appropriately qualified school personnel, or other appropriate agency personnel such as the Regional Education Service Center consultants.

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Section 3. - DISABILITY CRITERIA

REGULATIONS

§300.8 Child with a disability.
(a) General.
(1) Child with a disability means a child evaluated in accordance with §§300.304 through 300.311 as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as emotional disturbance), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.
(2) (i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.
(ii) If, consistent with §300.38(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.
(b) Children aged 3-9 *(found in this Section 3 - Disability Criteria)*
(c) Definitions of disability terms *(found in this Section 3 - Disability Criteria)*
Each disability criteria requires addressing how the disability adversely affects a child's educational performance : A child does not have to fail or be retained in a course or grade in order to be considered for special education and related services. However, the child must have one or more of the impairments identified in Federal law and need special education and related services because of that impairment. A range of factors - both academic and nonacademic- can be considered in making this determination for each individual child. Even if a child is advancing from grade to grade or is placed in the regular educational environment for most or all of the school day, the team still could determine the child's impairment or condition adversely affects the child's educational performance because the child could not progress satisfactorily in the absence of specific instructional adaptations or supportive services, including modifications to the general education curriculum.

§300.306 Determination of eligibility *(for more information see Section 2 – FIE)*
(a) General. Upon completion of the administration of assessments and other evaluation measures-
(1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in §300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and
(2) The Wood County SSA provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.
The group of "qualified professionals" includes those described below.
For all of the Fed. Regs for 300.306, they are found in section 200 on pg. 204 under V.

TAC §89.1040. Eligibility Criteria
(a) Special education services. To be eligible to receive special education services, a student must be a "child with a disability," as defined in 34 Code of Federal Regulations (CFR), §300.8(a), subject to the provisions of 34 CFR, §300.8(c), the Texas Education Code (TEC), §29.003, and this section. The provisions in this section specify criteria to be used in determining whether a student's condition meets one or more of the definitions in federal regulations or in state law.
(b) Eligibility determination. The determination of whether a student is eligible for special education and related services is made by the student's admission, review, and dismissal (ARD) committee. Any evaluation or re-evaluation of a student shall be conducted in accordance with 34 CFR, §§300.301-300.306 and 300.122. The **multidisciplinary team** that collects or reviews evaluation data in connection with the determination of a student's eligibility must include, but is not limited to, the following:
(1) a licensed specialist in school psychology (LSSP), an educational diagnostician, or other appropriately certified or licensed practitioner with experience and training in the area of the disability; or

(2) a licensed or certified professional for a specific eligibility category defined in subsection (c) of this section. *(Subsection (c) Definitions of disability terms is located within each individual disability category.)*

TEC §29.003.Eligibility Criteria

(a) The TEA shall develop specific eligibility criteria based on the general classifications established by this section with reference to contemporary diagnostic or evaluative terminologies and techniques. Eligible students with disabilities shall enjoy the right to a free appropriate public education, which may include instruction in the regular classroom, instruction through special teaching, or instruction through contracts approved under this subchapter. Instruction shall be supplemented by the provision of related services when appropriate.

(b) A student is eligible to participate in the WCSESSA special education program if the student:

(1) is not more than 21 years of age and has a visual or auditory impairment that prevents the student from being adequately or safely educated in public school without the provision of special services; or

(2) is at least three but not more than 21 years of age and has one or more of the following disabilities that prevents the student from being adequately or safely educated in public school without the provision of special services:

(A) physical disability;
(B) intellectual disability;
(C) emotional disturbance;
(D) learning disability;
(E) autism;
(F) speech disability; or
(G) traumatic brain injury.

TAC §89.1035. Age Ranges for Student Eligibility

(a) Pursuant to state and federal law, services provided in accordance with this subchapter must ~~shall~~ be available to all eligible students ages 3-21. Services will be made available to eligible students on their third birthday. Graduation with a regular high school diploma pursuant to §89.1070 (b)(1), (b)(2)(D), (g)(1), (g)(2), (g)(3), or (g)(4)(D) of this title (relating to Graduation Requirements) terminates a student's eligibility to receive services in accordance with this subchapter. An eligible student receiving special education services who is 21 years of age on September 1 of a school year must ~~shall~~ be eligible for services through the end of that school year or until graduation with a regular high school diploma pursuant to §89.1070 (b)(1), (b)(2)(D), (g)(1), (g)(2), (g)(3), or (g)(4)(D) of this title, whichever comes first.

(b) In accordance with the Texas Education Code (TEC), §§29.003, 30.002(a) - *(TEA statewide plan),* and 30.081 *(below),* a free, appropriate, public education must ~~shall~~ be available from birth to students with visual or auditory impairments.

The evaluation personnel will complete the district approved "eligibility form" for the disability to document compliance.

TEC §30.081. Legislative Intent Concerning Regional Day Schools for the Deaf

The legislature, by this subchapter, intends to continue a process of providing on a statewide basis a suitable education to deaf or hard of hearing students who are under 21 years of age and assuring that those students have the opportunity to become independent citizens.

I. AUDITORY IMPAIRMENT

§300.8 Child with a disability.
(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:
(3) Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance.

§300.8 Child with a disability.
(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:
(5) Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

TAC §89.1040. Eligibility Criteria.
(c) Eligibility definitions.
(3) Auditory impairment. A student with an auditory impairment is one who has been determined to meet the criteria for deafness as stated in 34 CFR, §300.8(c)(3), or for hearing impairment as stated in 34 CFR, §300.8(c)(5). The evaluation data reviewed by the multidisciplinary team in connection with the determination of a student's eligibility based on an auditory impairment must include an otological examination performed by an otolaryngologist or by a licensed medical doctor, with documentation that an otolaryngologist is not reasonably available and an audiological evaluation performed by a licensed audiologist. The evaluation data must include a description of the implications of the hearing loss for the student's hearing in a variety of circumstances with or without recommended amplification.
(b-1) In addition to the terms and phrases listed in Subsection (a), the legislature and the Texas Legislative Council are directed to avoid using in any new statute or resolution "hearing impaired," "auditory impairment," and "speech impaired" in reference to a deaf or hard of hearing person, and the legislature and the Texas Legislative Council are directed to replace, when enacting or revising a statute or resolution, those phrases with "deaf" or "hard of hearing," as appropriate.

§300.113 Routine checking of hearing aids and external components of surgically implanted medical devices.
(a) Hearing aids. Each public agency must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.
(b) External components of surgically implanted medical devices.
(1) Subject to paragraph (b)(2) of this section, each public agency must ensure that the external components of surgically implanted medical devices are functioning properly.
(2) For a child with a surgically implanted medical device who is receiving special education and related services under this part, a pubic agency is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).

Click link to review the Region 11 ESC Deaf, Hard of Hearing Function/Project which TEA supports.
https://texasdeafed.org/

II. AUTISM

§300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(1) (i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(ii) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section. *See IV. Emotional Disturbance (c)(4)*

(2) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

(1) Autism. A student with autism is one who has been determined to meet the criteria for autism as stated in 34 CFR, §300.8(c)(1). Students with pervasive developmental disorders are included under this category. The team's written report of evaluation must include specific recommendations for behavioral interventions and strategies.

Click link to review the Region 13 ESC Autism Statewide Leadership Function/Project which TEA supports.
http://www.txautism.net/evaluations

A child with a pervasive developmental disorder is included under the eligibility criteria for autism. Diagnosis and eligibility will be determined by trained and experienced evaluation professionals on the multidisciplinary team (including an LSSP and a SLP). These professionals use a range of information to distinguish autism spectrum disorders from other disorders by close examination of comprehensive assessment information and the student's developmental history and presentation of symptoms.

WCSESSA will follow diagnostic criteria for autism spectrum disorder (ASD) and the related diagnosis of social communication disorder (SCD), as they appear in the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5), published by the American Psychiatric Association and released on May 18, 2013.
Link: disorders
The new DSM-5 text states "Individuals with a well-established DSM-IV diagnoses of autistic disorder, Asperger's disorder, or pervasive developmental disorder not otherwise specified should be given the diagnosis of autism spectrum disorder."

New Criteria

The new criteria for diagnosis include two domains where people with Autism Spectrum Disorder (ASD) must show persistent deficits:

- *Domain 1. Persistent social communication and social interaction deficits*
- *Domain 2. Restricted and repetitive patterns of behavior*

People with ASD must demonstrate (either in the past or in the present) deficits in the following:

- *social-emotional reciprocity*
- *deficits in nonverbal communicative behaviors used for social interaction, and*
- *deficits in developing and maintaining and understanding relationships*

In addition they must show at least two types of repetitive patterns of behavior including:

- *stereotyped or repetitive motor movements,*
- *insistence on sameness or inflexible adherence to routines,*

- *highly restricted, fixated interests or hyper or hyper reactivity to sensory input or unusual interest in sensory aspects of the environment.*

Under the new DSM5, professional evaluators should also rate the severity of these deficits, based on what level of support they require.

Key Changes:
The five major changes are:

- *The new classification system eliminates the previously separate subcategories on the autism spectrum, including Asperger syndrome, PDD-NOS, childhood disintegrative disorder and autistic disorder. These subcategories will be folded into the broad term autism spectrum disorder (ASD). Students previously diagnosed will not lose the diagnosis of Autism.*
- *Instead of three domains of autism symptoms (social impairment, language/communication impairment and repetitive/restricted behaviors), two categories will be used: a) social communication impairment, and 2)restricted interests/repetitive behaviors. (Under the DSM-IV, a person qualified for an ASD diagnosis by exhibiting at least six of twelve deficits in social interaction, communication or repetitive behaviors. Under the DSM-5, diagnosis will require a person to exhibit three deficits in social communication and at least two symptoms in the category of restricted range of activities/repetitive behaviors. Within the second category, a new symptom will be included: hyper- or hypo-reactivity to sensory input or unusual interests in sensory aspects of the environment.)*
- *Symptoms can currently be present, or reported in past history.*
- *In addition to the diagnosis, each person evaluated will also be described in terms of any known genetic cause (e.g. fragile X syndrome, Rett syndrome), level of language and intellectual disability and presence of medical conditions such as seizures, anxiety, depression, and/or gastrointestinal (GI) problems.*
- *A new category called Social Communication Disorder (SCD) has been added. This will allow for a diagnosis of disabilities in social communication without the presence of repetitive behavior*

III. DEAF – BLINDNESS

§300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(2) Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

(2) Deaf-blindness. A student with deaf-blindness is one who has been determined to meet the criteria for deaf-blindness as stated in 34 CFR, §300.8(c)(2). In meeting the criteria stated in 34 CFR, §300.8(c)(2), a student with deaf-blindness is one who, based on the evaluations specified in subsections (c)(3) and (c)(12) of this section:

(c)(3) *is Auditory Impairment* and
(c)(12) *is Visual Impairment*

(A) meets the eligibility criteria for auditory impairment specified in subsection (c)(3) of this section and visual impairment specified in subsection (c)(12) of this section;

(B) meets the eligibility criteria for a student with a visual impairment and has a suspected hearing loss that cannot be demonstrated conclusively, but a speech/language therapist, a certified speech and language therapist, or a licensed speech language pathologist indicates there is no speech at an age when speech would normally be expected;

(C) has documented hearing and visual losses that, if considered individually, may not meet the requirements for auditory impairment or visual impairment, but the combination of such losses adversely affects the student's educational performance; or

(D) has a documented medical diagnosis of a progressive medical condition that will result in concomitant hearing and visual losses that, without special education intervention, will adversely affect the student's educational performance.

Also available for resources is the TEA - Texas Deaf-Blind Project Information and training site.
http://tea.texas.gov/index2.aspx?id=2147498227

SECTION 1. Section 392.002, Government Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) In addition to the terms and phrases listed in Subsection (a), the legislature and the Texas Legislative Council are directed to avoid using in any new statute or resolution "hearing impaired," "auditory impairment," and "speech impaired" in reference to a deaf or hard of hearing person, and the legislature and the Texas Legislative Council are directed to replace, when enacting or revising a statute or resolution, those phrases with "deaf" or "hard of hearing," as appropriate.

IV. EMOTIONAL DISTURBANCE

§300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

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

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

(4) Emotional disturbance. A student with an emotional disturbance is one who has been determined to meet the criteria for emotional disturbance as stated in 34 CFR, §300.8(c)(4). The written report of evaluation must include specific recommendations for behavioral supports and interventions.

Who will assess emotional or behavioral disturbance?

Diagnosis and eligibility will be assessed by trained and experienced evaluation professionals on the multidisciplinary team described at the beginning of this Section 3. These professionals use a range of information to distinguish emotional disturbance from other disabilities by close examination of comprehensive assessment information and the student's history and presentation of symptoms.

How will you ensure that schizophrenia is included in the eligibility category of ED?

The most widely used standardized criteria for diagnosing schizophrenia come from the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-current version),

According to the revised current edition of the Diagnostic and Statistical Manual of Mental Disorders, to be diagnosed with schizophrenia, three diagnostic criteria must be met:

1. *Characteristic symptoms: Two or more of the following, each present for much of the time during a one-month period (or less, if symptoms remitted with treatment).*
   - *Delusions*
   - *Hallucinations*
   - *Disorganized speech, which is a manifestation of formal thought disorder*
   - *Grossly disorganized behavior (e.g. dressing inappropriately, crying frequently) or catatonic behavior*
   - *Negative symptoms: Blunted affect (lack or decline in emotional response), alogia (lack or decline in speech), or avolition (lack or decline in motivation)*

   If the delusions are judged to be bizarre, or hallucinations consist of hearing one voice participating in a running commentary of the patient's actions or of hearing two or more voices conversing with each other, only that symptom is required above. The speech disorganization criterion is only met if it is severe enough to substantially impair communication.
2. *Social/occupational dysfunction : For a significant portion of the time since the onset of the disturbance, one or more major areas of functioning such as work, interpersonal relations, or self-care, are markedly below the level achieved prior to the onset.*
3. *Duration: Continuous signs of the disturbance persist for at least six months. This six-month period must include at least one month of symptoms (or less, if symptoms remitted with treatment).*

V. INTELLECTUAL DISABILITY

§300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(6) (Intellectual Disability) means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

(5) Intellectual Disability. A student with an intellectual disability is one who has been determined to meet the criteria for an intellectual disability as stated in 34 CFR, §300.8(c)(6). In meeting the criteria stated in 34 CFR, §300.8(c)(6), a student with an intellectual disability is one who:

(A) has been determined to have significantly sub-average intellectual functioning as measured by a standardized, individually administered test of cognitive ability in which the **overall test score** is at least two standard deviations below the mean, **when taking into consideration the standard error of measurement** of the test; and

(B) concurrently exhibits **deficits in at least two** of the following areas of adaptive behavior: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety.

*The following **local** guidelines apply:*

1. *You must use the overall test score of the individually administered test of cognitive ability. You must take into consideration the standard error of measurement of the test given.*
   Example: If the test given is a Wechsler and the standard error of measurement is + or – 3 and the overall intelligence quotient score is 70, the student is considered to be functioning within the intellectually disabled range.
   Note: Upon analysis of patterns within cognitive and achievement assessment, further consideration may be warranted by professional evaluators.

2. *If non-standardized procedures are used to administer a standardized test or developmental scale because of a severe sensory impairment (e.g. a visual impairment), another severe physical disability, or because of language or communication differences, the adaptations should be noted and the implications for test interpretation should be documented. Normed scores are based on standardized administration procedures and should not be reported if non-standardized procedures are used to administer the test. Reporting ranges or categories of scores may be more appropriate.*

3. *If a student is very young and/or has a severe disability or a severe sensory impairment, a developmental scale may be administered instead of intelligence tests. The student's performance must be within the intellectually disabled range on the developmental scale.*

4. *Some measures of intellectual ability result in a composite or global score rather than individual verbal and performance scores. When an IQ test is used which results in a single score, it is up to the evaluation professional to ensure that both verbal and performance skills have been measured and documented. If they have, the single score will suffice as a measure of both verbal and performance ability.*

5. *An adaptive behavior scale must be administered and documented. Some examples of adaptive behavior scales include the Adaptive Behavior Inventory for Children, Vineland Adaptive Behavior Scales, and Scales of Independent Behavior. Document deficits in at least two of the areas of adaptive behavior listed in 89.1040 (c)(5)(B) above. The adaptive behavior scale includes interviewing a parent , teacher, and/or another individual who is familiar with the student's daily activities. Deficit scores should equate to a standard score of 70 when taking into consideration the standard error of measurement of the test given.*

VI. MULTIPLE DISABILITIES

§300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(7) Multiple disabilities means concomitant impairments (such as intellectual disability -blindness, intellectual disability -orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

(6) Multiple disabilities.

(A) A student with multiple disabilities is one who has been determined to meet the criteria for multiple disabilities as stated in 34 CFR, §300.8(c)(7). In meeting the criteria stated in 34 CFR, §300.8(c)(7), a student with multiple disabilities is one who has a combination of disabilities defined in this section and who meets all of the following conditions:

(i) the student's disability is expected to continue indefinitely; and

(ii) the disabilities severely impair performance in two or more of the following areas:

(I) psychomotor skills;

(II) self-care skills;

(III)communication;

(IV social and emotional development; or

(V) cognition.

(B) Students who have more than one of the disabilities defined in this section but who do not meet the criteria in subparagraph (A) of this paragraph must not be classified or reported as having multiple disabilities.

VII. NONCATEGORICAL EARLY CHILDHOOD (NCEC) – Developmental Delays

§300.8 Child with a disability.

(b) Children aged three through nine experiencing developmental delays. Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may, at the discretion of the State and the LEA and in accordance with §300.111(b), include a child--

(1) Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

(2) Who, by reason thereof, needs special education and related services.

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

(13)Noncategorical. A student between the ages of 3-5 who is evaluated as having an intellectual disability, an emotional disturbance, a specific learning disability, or autism may be described as noncategorical early childhood.

Use of NCEC is a local decision. The use of NCEC will be determined by the WCSESSA at the policy level prior to implementation in the evaluation and ARD/IEP committee process.

Document that the student is evaluated as having one of the following:

- *autism, (attach written report)*
- *emotional disturbance, (attach written report)*
- *learning disability, (attach written report) or*
- *intellectual disability . (attach written report)*

In making a decision to identify a child as being eligible under the NCEC eligibility category, multidisciplinary teams and ARD/IEP committees could consider the following:

- *the age of the child and/or*
- *the child's functioning level and/or*
- *all available formal and informal evaluation data.*

VIII. ORTHOPEDIC IMPAIRMENT

§300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(8) Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

(7) Orthopedic impairment. A student with an orthopedic impairment is one who has been determined to meet the criteria for orthopedic impairment as stated in 34 CFR, §300.8(c)(8). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on an orthopedic impairment must include a licensed physician.

IX. OTHER HEALTH IMPAIRMENT

§300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(9) Other health impairment means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that--

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia and Tourette syndrome; and

(ii) Adversely affects a child's educational performance.

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

(8) Other health impairment. A student with other health impairment is one who has been determined to meet the criteria for other health impairment due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette's Disorder as stated in 34 CFR, §300.8(c)(9). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on other health impairment must include a licensed physician.

X. SPECIFIC LEARNING DISABILITY

§300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(10) Specific learning disability.

(i) General. Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(ii) Disorders not included. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

§300.307 Specific learning disabilities.

(a) General. A State must adopt, consistent with §300.309 criteria for determining whether a child has a specific learning disability as defined in §300.8 (c)(10). In addition, the criteria adopted by the State-

(1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability as defined in §300.8 (c)(10).

(2) Must permit the use of a process based on the child's response to evidence-based intervention; and

(3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability as defined in §300.8 (c)(10).

View "RTI and Learning Disability Eligibility" http://tea.texas.gov/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=25769817951&libID=25769818054

(b) Consistency with State criteria. The WCSESSA must use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability. (Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

Upon analysis of patterns within cognitive and achievement assessment, further consideration may be warranted by professional evaluators.

§300.308 Additional group members.

The determination of whether a child suspected of having a specific learning disability is a child with a disability, as defined in §300.8, must be made by the child's parents and a team of qualified professionals, which must include--

(a) (1) The child's regular teacher; or

(2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or

(3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and

(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher. (Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

The team of qualified professionals (including the parent) will meet as an ARD/IEP Committee to review the FIE and determine if the child is a child with a disability and if there is an educational need in order for the student to meet eligibility criteria for special education services.

§300.309 Determining the existence of a specific learning disability.

(a) The group described in §300.306 may determine that a child has a specific learning disability, as defined in §300.8(c)(10), if-

(1) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and

instruction appropriate for the child's age or State-approved grade-level standards:
(i) Oral expression.
(ii) Listening comprehension.
(iii) Written expression.
(iv) Basic reading skill.
(v) Reading fluency skills.
(vi) Reading comprehension.
(vii) Mathematics calculation.
(viii) Mathematics problem solving.

(2) (i) The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child's response to evidence-based intervention; or
(ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments consistent with §§300.304 and 300.305; and

(3) The group determines that its findings under paragraph (a)(1) and (2) of this section are not primarily the result of--
(i) A visual, hearing, or motor disability;
(ii) Intellectual disability;
(iii) Emotional disturbance;
(iv) Cultural factors; or
(v) Environmental or economic disadvantage.
(vi) Limited English proficiency.

(b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in §§300.304 through 300.306--
(1) Data that demonstrate that prior to, or as a part of the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
(2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

(c) The WCSESSA must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in 300.301 and 300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in 300.306(1)(1)--
(1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (b)(1) and (b)(2) of this section; and
(2) Whenever a child is referred for an evaluation.
Referenced above: section 1111(b)(8)(D) and (E) of the ESEA (No Child Left Behind) refers to the Academic Standards, Academic Assessments and Accountability Requirements. Upon analysis of patterns within cognitive and achievement assessment, further consideration may be warranted by professional evaluators.

§300.310 Observation.

(a) The WCSESSA must ensure that the child is observed in the child's learning environment, including the regular classroom setting, to document the child's academic performance and behavior in the areas of difficulty.

(b) The group described in §300.306(a)(1), in determining whether a child has a specific learning disability, must decide to—
(1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or
(2) Have at least one member of the group described in §300.306(a)(1) conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with §300.300(a), is obtained.

(c) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age. (Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))
The district will attempt to schedule an observation of the child at the day care where the student attends. If this is not feasible, the district will use an age appropriate play room on a district campus.

Parental consent is not required for observations conducted as part of routine classroom instruction and monitoring of child before the child is referred for an evaluation. Parental consent is required for observations conducted after the student is suspected of having a disability and is referred for an evaluation. The district may choose to use either type of observation as available and appropriate.

§300.311 Specific documentation for the eligibility determination.

(a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required by §300.306(a)(2), must include a statement of--

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination, including an assurance that the determination has been made in accordance with §300.306(c)(1);

(3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;

(4) The educationally relevant medical findings, if any;

(5) Whether --

(i) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with §300.309(a)(1); and

(ii) (A) The child does not make sufficient progress to meet age or State-approved grade-level standards consistent with §300.309(a)(2)(i); or

(B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards or intellectual development consistent with §300.309(a)(2)(ii).

(6) The determination of the group concerning the effects of a visual, hearing, or motor disability; intellectual disability, emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and

(7) If the child has participated in a process that assesses the child's response to evidence-based intervention--

(i) The instructional strategies used and the student-centered data collected;

(ii) The documentation that the child's parents were notified about—

(A) The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

(B) Strategies for increasing the child's rate of learning; and

(C) The parents' right to request an evaluation.

(b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions. (Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

(9) Learning disability.

(A) Prior to and as part of the evaluation described in subparagraph (B) of this paragraph and 34 CFR, §§300.307-300.311, and in order to ensure that underachievement in a student suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or mathematics, the following must be considered:

(i) data that demonstrates the child was provided appropriate instruction in reading (as described in 20 United States Code (USC), §6368(3)), and/or mathematics within general education settings delivered by qualified personnel; and

(ii) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal evaluation of student progress during instruction. Data-based documentation of repeated assessments may include, but is not limited to, response to intervention progress monitoring results, in-class tests on grade-level curriculum, or other regularly administered assessments. Intervals are considered reasonable if consistent with the assessment requirements of a student's specific instructional program.

(B) A student with a learning disability is one who:

(i) has been determined through a variety of assessment tools and strategies to meet the criteria for a specific learning disability as stated in 34 CFR, §300.8(c)(10), in accordance with the provisions in 34 CFR, §§300.307-300.311; and

(ii) does not achieve adequately for the student's age or meet state-approved grade-level standards in oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, or mathematics problem solving when provided appropriate instruction, as indicated by performance on multiple measures such as in-class tests; grade average over time (e.g. six weeks, semester); norm- or criterion-referenced tests; statewide assessments; or a process based on the student's response to evidence-based intervention; and

(I) does not make sufficient progress when provided a process based on the student's response to evidence-based intervention (as defined in 20 USC, §7801(37)), as indicated by the student's performance relative to the performance of the student's peers on repeated, curriculum-based assessments of achievement at reasonable intervals, reflecting student progress during classroom instruction; or

(II) exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to age, grade-level standards, or intellectual ability, as indicated by significant variance among specific areas of cognitive function, such as working memory and verbal comprehension, or between specific areas of cognitive function and academic achievement.

*The following **local** guidelines apply:*

Due to the changes in criteria for determining a child has a specific learning disability, special education referrals (reviews of educational need) MUST be discussed with local campus administration. Determine the degree of training / support necessary for a thorough understanding of the federal and state requirements prior to referral for special education evaluation:

Referrals: Initial referrals must have gone through a rigorous "Response to Intervention" process prior to the referral for special education evaluation and ALL documentation must support the RtI process implemented. In summary, the regulations state the following:

** the discrepancy model was NOT required by the TEA rules*

** the process used was based on the child's response to evidence-based intervention and instruction by a highly qualified teacher*

** the student meets criteria in 300.8 (c)(10) that are NOT primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage or LEP.*

Our local district guidelines are to review data gathered by the RtI Committee , however, a determination of a learning disability will not be through the use of Intervention data alone. Additional evaluation data will also be used.

Re-evaluations: The committee reviewing existing evaluation data in determining the need for additional evaluations is encouraged to consider a comprehensive reevaluation of those students who qualified solely upon the use of the previous discrepancy model.

The WCSESSA will provide a specific checklist / form which will incorporate all of the Federal and State data elements required for the comprehensive review of each student in the determination of specific learning disability. This will assist the RtI Committee to document appropriately prior to referral for evaluation of a student suspected of having a learning disability.

Also suggest you address:
What kind of assessment will you use to determine whether a pattern of strengths and weaknesses indicates a learning disability?
How will you address the appropriateness of instruction for a child who was homeschooled or who attended private school?
If you have a "Diagnostician Handbook" you could reference that here instead of getting specific. State you will follow the current WCSESSA "Diagnostician Handbook".

Additional TEA Guidance: https://tea.texas.gov/Academics/Special_Student_Populations/Special_Education/Programs_and_Services/Response_to_Intervention/

Link to Statewide Assistance for Dyslexia Services: https://www.region10.org/programs/dyslexia-statewide/overview/

To review the TEA Dyslexia Handbook, click this link. https://tea.texas.gov/academics/dyslexia/
(to see the Dyslexia rule in its entirety go to Section 1. Intervetion/Referral).

XI. SPEECH OR LANGUAGE IMPAIRMENT

§300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(11) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

§300.34 Related services.

(15) Speech-language pathology services includes--

(i) Identification of children with speech or language impairments;

(ii) Diagnosis and appraisal of specific speech or language impairments;

(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

(iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and

(v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

(10)Speech impairment. A student with a speech impairment is one who has been determined to meet the criteria for speech or language impairment as stated in 34 CFR, §300.8(c)(11). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on a speech impairment must include a certified speech and hearing therapist, a certified speech and language therapist, or a licensed speech/language pathologist.

" Whether a speech and language impairment adversely affects a child's educational performance must be determined on a case-by-case basis, depending on the unique needs of a particular child and not based only on discrepancies in age or grade performance in academic subject areas." OSEP Letter to Clark (3-8-2007)

Refer to the WCSESSA Speech and Language Therapy local handbook for more specific information.

Or refer to:
http://www.esc4.net/users/0199/TSHA%20Eligibility%20docs/SI%20Language%20Eligibility%20Guidelines%20Manual.pdf

XII. TRAUMATIC BRAIN INJURY

§300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(12) Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

(11)Traumatic brain injury. A student with a traumatic brain injury is one who has been determined to meet the criteria for traumatic brain injury as stated in 34 CFR, §300.8(c)(12). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on a traumatic brain injury must include a licensed physician, in addition to the licensed or certified practitioners specified in subsection (b)(1) of this section. *(TAC §89.1040. b.1. is found at the beginning of Section 3.)*

The WCSESSA maintains a list of the most current appropriate assessment instruments used to address cognition, language, memory, attention, reasoning, abstract thinking, judgment, sensory, perceptual, and motor abilities, psychosocial behavior, physical function, information processing and speech. The list is in the office of the special education director.

Additional Information:
http://tea.texas.gov/Curriculum_and_Instructional_Programs/Special_Education/Programs_and_Services/State_Guidance/Traumatic_Brain_Injury/

XIII. VISUAL IMPAIRMENT

§300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(13) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

(Authority: 20 U.S.C. 1401(3); 1401(30))

TAC §89.1040. Eligibility Criteria.

(c) Eligibility definitions.

(12)Visual impairment.

(A) A student with a visual impairment is one who has been determined to meet the criteria for visual impairment as stated in 34 CFR, §300.8(c)(13). The visual loss should be stated in exact measures of visual field and corrected visual acuity at a distance and at close range in each eye in a report by a licensed ophthalmologist or optometrist. The report should also include prognosis whenever possible. If exact measures cannot be obtained, the eye specialist must so state and provide best estimates. In meeting the criteria stated in 34 CFR, §300.8(c)(13), a student with a visual impairment is one who:

(i) has been determined by a licensed ophthalmologist or optometrist:

(I) to have no vision or to have a serious visual loss after correction; or

(II) to have a progressive medical condition that will result in no vision or a serious visual loss after correction; and

(ii) has been determined by the following evaluations to have a need for special services:

(I) a functional vision evaluation by a certified teacher of students with visual impairments or a certified orientation and mobility instructor. The evaluation must include the performance of tasks in a variety of environments requiring the use of both near and distance vision and recommendations concerning the need for a clinical low vision evaluation and an orientation and mobility evaluation; and

(II) a learning media assessment by a certified teacher ~~professional certified in the education~~ of students with visual impairments. The learning media assessment must include recommendations concerning which specific visual, tactual, and/or auditory learning media are appropriate for the student and whether or not there is a need for ongoing evaluation in this area.

(B) A student with a visual impairment is functionally blind if, based on the preceding evaluations, the student will use tactual media (which includes Braille) as a primary tool for learning to be able to communicate in both reading and writing at the same level of proficiency as other students of comparable ability.

(C) Beginning with the 2014-2015 school year, a full individual and initial evaluation of a student suspected of having a visual impairment must include an orientation and mobility evaluation conducted by a person who is appropriately certified as an orientation and mobility specialist and must be conducted in a variety of lighting conditions and in a variety of settings, including in the student's home, school, and community and in settings unfamiliar to the student.

(D) Beginning with the 2014-2015 school year, a person who is appropriately certified as an orientation and mobility specialist must participate, as part of a multidisciplinary team, in evaluating data used in making the determination of the student's eligibility as a student with a visual impairment.

(E) Beginning with the 2014-2015 school year, the scope of any reevaluation of a student who has been determined, after the full individual and initial evaluation, to be eligible for the district's special education program on the basis of a visual impairment must be determined, in acordance with 34 CFR, §§300.122 and 300.303-300.311, by a multidisciplinary team that includes an appropriately certified orientation and mobility specialist.

TEC §30.002 (HB 590) amended Statewide Plan requirement to add Subsections (c-1) and (c-2) relating to assessment to read as follows:

(c-1) To implement Subsection (c)(1) and to determine a child's eligibility for a school district's special education program on the basis of a visual impairment, the full individual and initial evaluation of the student required by Section 29.004 must, in accordance with commissioner rule:

(1) include an orientation and mobility evaluation conducted:

(A) by a person who is appropriately certified as an orientation and mobility specialist, as determined under commissioner rule; and

(B) in a variety of lighting conditions and in a variety of settings, including in the student's home, school, and community and in settings unfamiliar to the student; and

(2) provide for a person who is appropriately certified as an orientation and mobility specialist to participate, as part of a multidisciplinary team, in evalauting data on which the determination of the child's eligibility is based.

(c-2) The scope of any reevaluation by a school district of a student who has been determined, after the full individual and initial evaluation, to be eligible for the district's special education program on the basis of a visual impairment shall be determined, in accordance with 34 C.F.R. Sections 300.122 and 300.303 through 300.311, by a multidisciplinary team that includes, as provided by commissioner rule, a person described by Subsection (c-1)(1)(A).

http://www.statutes.legis.state.tx.us/SOTWDocs/ED/htm/ED.30.htm

Click link to review the Region 11 ESC Blind or Visually Impaired Statewide Function/Project which TEA supports. http://www.slsbvitexas.org/

The TEA provides guidance for Services to Students who are Blind or Visually Impaired. The Education Service Center will be contacted if further assistance is needed for training, assessment or other services.

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Section 4a. INDIVIDUAL EDUCATION PROGRAM

I. REQUIRED ARD/IEP

TEC §29.005. Individualized Education Program

(a) Before a child is enrolled in a special education program of the WCSESSA, the district shall establish a committee composed of the persons required under 20 U.S.C. Section 1414(d) ~~1401(11)~~ to develop the child's individualized education program. If a committee is required to include a regular education teacher, the regular education teacher included must, to the extent practicable, be a teacher who is responsible for implementing a portion of the child's individualized education program.

TAC §89.1050. The Admission, Review, and Dismissal (ARD) Committee.

(a) Each school district must shall establish an admission, review, and dismissal (ARD) committee for each eligible student with a disability and for each student for whom a full individual and initial evaluation is conducted pursuant to §89.1011 of this title (relating to Full Individual and Initial Evaluation). The ARD committee is the individualized education program (IEP) team defined in federal law and regulations, including, specifically, 34 Code of Federal Regulations (CFR), §300.321. The WCSESSA is 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, including the following:

TAC §89.1050(a):	*Op. Guideline below*
(1) 34 CFR, §§300.320-300.325, and Texas Education Code (TEC), §29.005 (individualized education programs);	*Section 4*
(2) 34 CFR, §§300.145-300.147 (relating to placement of eligible students in private schools by a school district);	*Section 5*
(3) 34 CFR, §§300.132, 300.138, and 300.139 (relating to the development and implementation of service plans for eligible students in private school who have been designated to receive special education and related services);	*Section 5*
(4) 34 CFR, §300.530 and §300.531, and TEC, §37.004 (Disciplinary Placement of Students with Disabilities);	*Section 6*
(5) 34 CFR, §§300.302-300.306 (relating to evaluations, re-evaluations, and determination of eligibility);	*Section 3*
(6) 34 CFR, §§300.114-300.117 (relating to least restrictive environment);	*Section 4*
(7) TEC, §28.006 (Reading Diagnosis);	*Section 4*
(8) TEC, §28.0211 (Satisfactory Performance on Assessment Instruments Required; Accelerated Instruction);	*Section 4*
(9) TEC, §28.0212 (Junior High or Middle School Personal Graduation Plan);	*Section 4*
(10) TEC, §28.0213 (Intensive Program of Instruction);	*Section 4*
(11) TEC, Chapter 29, Subchapter I (Programs for Students Who Are Deaf or Hard of Hearing);	*Section 4*
(12) TEC, §30.002 (Education for Children with Visual Impairments);	*Section 4*
(13) TEC, §30.003 (Support of Students Enrolled in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf);	*Section 8*
(14) TEC, §33.081 (Extracurricular Activities); *(suspension)*	*Section 6*
(15) TEC, Chapter 39, Subchapter B (Assessment of Academic Skills); and	*Section 4*
(16) TEC, §42.151 (Special Education). *(funding)*	*Section 8*

TAC §89.1050 Admission, Review, and Dismissal (a-j) in its entirety is in this OG Section 4a.

§300.112 Individualized education programs (IEP).

The State must ensure that an IEP, or an IFSP that meets the requirements of section 636(d) of the Act, is developed, reviewed, and revised for each child with a disability in accordance with §§300.320 through 300.324, except as provided in §300.300(b)(3)(ii). (Authority: 20 U.S.C. 1412(a)(4)) *(§§300.320 Definition of IEP, .321 IEP Team, .322 Parent Participation, .323 when IEPs must be in effect, .324 Development of IEP) (300.300(b) Parent Consent)*

TAC §89.1050. The Admission, Review, and Dismissal (ARD) Committee.

(b) For a student from birth through two years of age with visual and/or auditory impairments, an individualized family services plan (IFSP) meeting must be held in place of an ARD committee meeting in accordance with 34 CFR, §§300.320-300.324, and the memorandum of understanding between the Texas Education Agency and the Department of Assistive and Rehabilitative Services. For students three years of age and older, school districts must develop an IEP.

§300.323 When IEPs must be in effect.

(a) General. At the beginning of each school year, the WCSESSA must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in §300.320.

(b) Preschool (PPCD); (c)Timeline below; (d)Teacher Accessibility and Input; (e)Transfer Instate; (f)Transfer Out of state; (g)Records *(all found in this section 4)*

II. TIMELINE

§300.323 When IEPs must be in effect.

(c) Initial IEPs; provision of services. The Wood County SSA must ensure that--

(1) A meeting to develop an IEP for a child is conducted within 30-days of a determination that the child needs special education and related services; and

(2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

TAC §89.1011. Full Individual and Initial Evaluation

(b) If a parent submits 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 school district must, not later than the 15th school day after the date the district receives the request:

(1) provide the parent with prior written notice of its proposal to conduct an evaluation consistent with 34 Code of Federal Regulations (CFR), §300.503; a copy of the procedural safeguards notice required by 34 CFR, §300.504; and an opportunity to give written consent for the evaluation; or

(2) provide the parent with prior written notice of its refusal to conduct an evaulation consistent with 34 CFR, §300.503, and a copy of the procedural safeguards notice required by 34 CFR, §300.504.

(c) Except as otherwise provided in this section, a written report of a full individual and initial evaluation of a student must be completed as follows:

(1) not later than the 45th school day following the date on which the school district receives written consent for the evaluation from the student's parent, except that if a student has been absent from school during that period on three or more school 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

(2) 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 from the student's parent.

(d) The admission, review, and dismissal (ARD) committee must make its decisions regarding a student's initial eligibility determination and, if appropriate, individualized education program (IEP) and placement within 30 calendar days from the date of the completion of the written full individual and initial evaluation report. If the 30th day falls during the summer and school is not in session, the student's ARD committee has until the first day of classes in the fall to finalize decisions concerning the student's initial eligibility determination, IEP, and placement, unless the full individual and initial evaluation indicates that the student will need extended school year services during that summer.

(e) Notwithstanding the timelines in subsections (c) and (d) of this section, if the school district received the written consent for the evaluation from the student's parent at least 35 but less than 45 school days before the last instructional day of the school year, the written report of a full individual and initial evaluation of a student must be provided to the student's parent not later than June 30 of that year. The student's ARD committee must meet not later than the 15th school day of the following school year to consider the evaluation. If, however, the student was absent from school three or more days between the time that the school district received written consent and the last instructional day of the school year, the timeline in subsection (c)(1) of this section applies to the date the written report of the full individual and initial evaluation is required.

(f) If a student was in the process of being evaluated for special education eligibility by a school district and enrolls in another school district before the previous school district completed the full individual and initial evaluation, the new school district must coordinate with the previous school district as necessary and as expeditiously as possible to ensure a prompt completion of the evaluation in accordance with 34 CFR, §300.301(d)(2) and (e) and §300.304(c)(5). The timelines in subsections (c) and (e) of this section do not apply in such a situation if:

(1) the new school district is making sufficient progress to ensure a prompt completion of the evaluation; and

(2) the parent and the new school district agree to a specific time when the evaluation will be completed.

(g) For purposes of subsections (b), (c), and (e) of this section, 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.

(h) For purposes of subsections (c)(1) and (e) of this section, a student is considered absent for the school day if the student is not in attendance at the school's official attendance taking time or at the alternate attendance taking time set for that student. A student is considered in attendance if the student is off campus participating in an activity that is approved by the school board and is under the direction of a professional staff member of the school district, or an adjunct staff member who has a minimum of a bachelor's degree and is eligible for participation in the Teacher Retirement System of Texas.

Following the required timelines, the ARD/IEP Committee will meet to review the FIE and determine if the child is a child with a disability and if there is an educational need in order for the student to be eligible for special education services.

III. WRITTEN REPORT OF ARD / IEP MEETING

§300.22 Individualized Education Program.
Individualized education program or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with §§300.320 through 300.324. (Authority: 20 U.S.C. 1401(14))

TAC §89.1050 The Admission, Review and Dismissal Committee

(i) If the student's parent is unable to speak English and the parent's native language is Spanish, the school district must provide a written copy or audio recording of the student's IEP translated into Spanish. If the student's parent is unable to speak English and the parent's native language is a language other than Spanish, the school district must make a good faith effort to provide a written copy or audio recording of the student's IEP translated into the parent's native language.

(1) For purposes of this subsection, a written copy of the student's IEP translated into Spanish or the parent's native language means that all of the text in the student's IEP in English is accurately translated into the target language in written form. The IEP translated into the target language must be a comparable rendition of the IEP in English and not a partial translation or summary of the IEP in English.

(2) For purposes of this subsection, an audio recording of the student's IEP translated into Spanish or the parent's native language means that all of the content in the student's IEP in English is orally translated into the target language and recorded with an audio device. A school district is not prohibited from providing the parent with an audio recording of an ARD committee meeting at which the parent was assisted by an interpreter as long as the audio recording provided to the parent contains an oral translation into the target language of all of the content in the student's IEP in English.

(3) If a parent's native language is not a written language, the school district must take steps to ensure that the student's IEP is translated orally or by other means to the parent in his or her native language or other mode of communication.

(4) Under 34 CFR, §300.322(f), a school district must give a parent a written copy of the student's IEP at no cost to the parent. A school district meets this requirement by providing a parent with a written copy of the student's IEP in English or by providing a parent with a written translation of the student's IEP in the parent's native language in accordance with paragraph (1) of this subsection.

The staff will provide a copy of the ARD/IEP document to the parent at the end of the meeting if the parent is in attendance. If the parent is not in attendance, a copy will be sent home to the parents within 3 school days of the meeting.

TAC §89.1055 Content of the Individualized Education Program.

(j) The written statement of the IEP must document the decisions of the ARD committee with respect to issues discussed at each ARD committee meeting. The written statement must also include:

(1) the date of the meeting;

(2) the name, position, and signature of each member participating in the meeting; and

(3) an indication of whether the child's parents, the adult student, if applicable, and the administrator agreed or disagreed with the decisions of the ARD committee.

Contact the Special Education Director for consultation when an ARD meeting is going to reconvene due to parental disagreement.

IV. DEFINITIONS

§300.11 Day; business day; school day.
(a) Day means calendar day unless otherwise indicated as business day or school day.
(b) Business day means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in §300.148(c)(1)(ii)).
(c) (1) School day means any day, including a partial day, that children are in attendance at school for instructional purposes.
(2) School day has the same meaning for all children in school, including children with and without disabilities. (Authority: 20 U.S.C. 1221e-3)

§300.14 Equipment. Equipment means--
(a) Machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and
(b) All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials. (Authority: 20 U.S.C. 1401(7))

§300.22 Individualized education program. Individualized education program or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with §§300.320 through 300.324. (Authority: 20 U.S.C. 1401(14))

§300.23 Individualized education program team. Individualized education program team or IEP Team means a group of individuals described in §300.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability. (Authority: 20 U.S.C. 1414(d)(1)(B))

§300.38 Secretary. Secretary means the Secretary of Education. (Authority: 20 U.S.C. 1401(28))

§300.39 Special education.
(a) General.
(1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including--
(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
(ii) Instruction in physical education.
(2) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section--
(i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;
(ii) Travel training; and
(iii) Vocational education.
(b) Individual special education terms defined. The terms in this definition are defined as follows:
(1) At no cost means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.
(2) Physical education means--
(i) The development of--
(A) Physical and motor fitness;
(B) Fundamental motor skills and patterns; and
(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and
(ii) Includes special physical education, adapted physical education, movement education, and motor development.

(3) Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction--

(i) To address the unique needs of the child that result from the child's disability; and

(ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the WCSESSA that apply to all children.

(4) Travel training means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to--

(i) Develop an awareness of the environment in which they live; and

(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

(5) Vocational education means--

Organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

(6) Vocational and technical education means organized educational activities that--

(i) Offer a sequence of courses that--

(A) Provides individuals with the rigorous and challenging academic and technical knowledge and skills the individuals need to prepare for further education and for careers (other than careers requiring a Master's or doctoral degree) in current or emerging employment sectors;

(B) May include the provision of skills or courses necessary to enroll in a sequence of courses that meet the requirements of this subparagraph; and

(C) Provides, at the postsecondary level, for a 1- year certificate, an associate degree, or industry-recognized credential; and

(ii) Include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills, or an individual.

§300.44 Universal design. Universal design has the meaning given the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002. *Universal design learning will provide multiple means of representation of materials for comprehension, multiple means of action or expression and multiple means of engagement.*

TEC §29.002. DEFINITION. In this subchapter, "special services" means:

(1) special education instruction, which may be provided by professional and supported by paraprofessional personnel in the regular classroom or in an instructional arrangement described by Section 42.151; and

(2) related services, which are developmental, corrective, supportive, or evaluative services, not instructional in nature, that may be required for the student to benefit from special education instruction and for implementation of a student's individualized education program.

V. CONTENT OF THE INDIVIDUALIZED EDUCATION PROGRAM (IEP).

§300.320 Definition of individualized education program.

(a)General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include--

(1) A statement of the child's present levels of academic achievement and functional performance, including--

(i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or

(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

(2) (i) A statement of measurable annual goals, including academic and functional goals designed to--

(A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

(B) Meet each of the child's other educational needs that result from the child's disability;

(ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

If the ARD Committee determines an alternate state assessment is appropriate, the ARD will develop short term objectives in addition to the measurable annual goals required in (2)(i) above.

(3) A description of--

(i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and

(ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

(4) A statement of the 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, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child--

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;

Click link to review the Region 20 ESC "Access General Curriculum (AGC)" Statewide Leadership Project which TEA supports. http://www.esc20.net/default.aspx?name=ci_se.agc.Home

Special education, related services and supplementary aids and services based on peer reviewed research to the extent practicable means to the extent that research is possible and available. Services with the greatest body of research are not necessarily the service required for a child to receive FAPE. An IEP is not required to include specific instructional methodologies unless the IEP committee agrees it is necessary for the child to receive FAPE. The final decision must be made by the child's IEP team based on the individual needs of the child. If the IEP committee determines a qualified student with a disability requires related aids and services to participate in a regular education class or program (including accelerated classes) then the student must receive those related aids and services. Additional information on scientifically based research and response to intervention resources may be found on the Region 10 ESC Special Education website.

(5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;

(6) (i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and

(ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why--

(A) The child cannot participate in the regular assessment; and
(B) The particular alternate assessment selected is appropriate for the child; and

(7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.

Documentation for provision of services described in the IEP will be through a variety of information and sources based on the most appropriate means for the individual service and environment. Special education instructional and related services will be documented by progress on the IEP, student attendance and lesson plans. In addition, portfolios may be maintained as well as provider logs. Provider logs will be maintained by each service provider and reviewed at the IEP meeting as appropriate. Any service interruption resulting from special education staff absence will be reported to the appropriate administration following local district procedures.

The Federal Register dated August 14, 2006, provides guidance in this area within its discussion of the comments regarding the proposed 2006 IDEA regulations. A comment to the regulations asked for clarification regarding the term duration. The response in the Federal Register was:
The meaning of the term "duration" will vary, depending on such things as the needs of the child, the service being provided, the particular format used in an IEP, and how the child's day and IEP are structured.
What is required is that the IEP include information about the amount of services that will be provided to the child, so that the level of the agency's commitment of resources will be clear to parents and other IEP Team members. The amount of time to be committed to each of the various services to be provided must be appropriate to the specific service, and clearly stated in the IEP in a manner that can be understood by all involved in the development and implementation of the IEP. (Federal Register, Vol 71 No 156 p. 46667)

Requirements for Documenting the Provision of Services

- *Frequency – **how often** the child will receive the service(s) (number of times per day or week). If the service is less than daily then the conditions for the provision of the services must be clearly specified within the ARD documents using a weekly reference (ex: 1 hour per week, 30 minutes every two weeks)*
- *Duration - **how long** each "session" will last (number of minutes) and **when** services will begin and end (starting and ending dates) How long will each session be (15 minutes, 30 minutes)? If a term (1 class period) is used in the IEP to define duration of service, the term must be defined in the IEP (example: 1 class period = 50 minutes).*
- *Location - **where** services will be provided (in the general education classroom or another setting such as a special education resource room.*

(b) Transition *see Transition in this Section 4.*
(c) Transfer of rights at age of majority. *See VI. Parent Rights below.*
(d) Construction. Nothing in this section shall be construed to require--

(1) That additional information be included in a child's IEP beyond what is explicitly required in section 614 of the Act; or
(2) The IEP Team to include information under one component of a child's IEP that is already contained under another component of the child's IEP. (Authority: 20 U.S.C. 1414(d)(1)(A) and (d)(6))

§300.324 Development, review, and revision of IEP.
(a)Development of IEP.

(1) General. In developing each child's IEP, the IEP Team must consider--
(i) The strengths of the child;
(ii) The concerns of the parents for enhancing the education of their child;
(iii) The results of the initial or most recent evaluation of the child; and
(iv) The academic, developmental, and functional needs of the child.

(2)Consideration of special factors. The IEP Team must…
(i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

The IEP committee is required to 'consider the use of positive behavioral interventions and supports, and other strategies to address that behavior' if the child's behavior impedes his or her learning or that of others. The final decision on interventions, strategies and supports is left to the IEP committee. Additional resources include the

Texas Behavior Support Initiative (TBSI) and the TEA statewide project Texas Collaborative for Emotional Development in Schools (TxCEDS). See also Section 6. Discipline.

(ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP; http://programs.esc20.net/default.aspx?name=lpac.framework

Also find more information regarding English Language Learners in Section 1. and LEP in Section 4b.

English Language Learners served by special education have needs related to a disability as well as needs related to language. The ARD committee and the LPAC will collaborate to make appropriate assessment decisions for these students in accordance with the procedures outlined in the ARD manual and the LPAC framework (found on ESC 20 link provided). The LPAC framework serves as a guide in making decisions about the inclusion of LEP students in the Texas Student Assessment Program and helps districts meet the educational needs of English learners.

(iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

(iv) Consider whether the child needs assistive technology devices and services.

(v) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode;

(b) Review and revision of IEP. *located in this Section 4 of the document.*

TAC §89.1055. Content of the Individualized Education Program (IEP).

(a) The individualized education program (IEP) developed by the admission, review, and dismissal (ARD) committee for each student with a disability must comply with the requirements of 34 Code of Federal Regulations (CFR), §300.320 and §300.324.

(b) The IEP must include a statement of any individual appropriate and allowable accommodations in the administration of assessment instruments developed in accordance with Texas Education Code (TEC), §39.023(a)-(c), or districtwide assessments of student achievement (if the district administers such optional assessments) that are necessary to measure the academic achievement and functional performance of the student on the assessments. If the ARD committee determines that the student will not participate in a general statewide or districtwide assessment of student achievement (or part of an assessment), the IEP must include a statement explaining:
(1) why the student cannot participate in the general assessment; and
(2) why the particular alternate assessment selected is appropriate for the student.

(c) If the ARD committee determines that the student is in need of extended school year (ESY) services, as described in §89.1065 of this title (relating to Extended School Year Services), then the IEP must identify which of the goals and objectives in the IEP will be addressed during ESY services.

(d) For students with visual impairments, from birth through 21 years of age, the IEP or individualized family services plan (IFSP) must also meet the requirements of TEC, §30.002(e).

(e) For students eligible under §89.1040(c)(1) of this title (relating to Eligibility Criteria), the strategies described in this subsection must be considered, based on peer-reviewed, research-based educational programming practices to the extent practicable and, when needed, addressed in the IEP:
(1) extended educational programming (for example: extended day and/or extended school year services that consider the duration of programs/settings based on assessment of behavior, social skills, communication, academics, and self-help skills);
(2) daily schedules reflecting minimal unstructured time and active engagement in learning activities (for example: lunch, snack, and recess periods that provide flexibility within routines; adapt to individual skill levels; and assist with schedule changes, such as changes involving substitute teachers and pep rallies);
(3) in-home and community-based training or viable alternatives that assist the student with acquisition of social/behavioral skills (for example: strategies that facilitate maintenance and

generalization of such skills from home to school, school to home, home to community, and school to community);

(4) positive behavior support strategies based on relevant information, for example:

(A) antecedent manipulation, replacement behaviors, reinforcement strategies, and data-based decisions; and

(B) a behavioral intervention plan developed from a functional behavioral assessment that uses current data related to target behaviors and addresses behavioral programming across home, school, and community-based settings;

(5) beginning at any age, consistent with subsection (h) of this section, futures planning for integrated living, work, community, and educational environments that considers skills necessary to function in current and post-secondary environments;

(6) parent/family training and support, provided by qualified personnel with experience in Autism Spectrum Disorders (ASD), that, for example:

(A) provides a family with skills necessary for a student to succeed in the home/community setting;

(B) includes information regarding resources (for example: parent support groups, workshops, videos, conferences, and materials designed to increase parent knowledge of specific teaching/management techniques related to the student's curriculum); and

(C) facilitates parental carryover of in-home training (for example: strategies for behavior management and developing structured home environments and/or communication training so that parents are active participants in promoting the continuity of interventions across all settings);

(7) suitable staff-to-student ratio appropriate to identified activities and as needed to achieve social/behavioral progress based on the student's developmental and learning level (acquisition, fluency, maintenance, generalization) that encourages work towards individual independence as determined by, for example:

(A) adaptive behavior evaluation results;

(B) behavioral accommodation needs across settings; and

(C) transitions within the school day;

(8) communication interventions, including language forms and functions that enhance effective communication across settings (for example: augmentative, incidental, and naturalistic teaching);

(9) social skills supports and strategies based on social skills assessment/curriculum and provided across settings (for example: trained peer facilitators (e.g., circle of friends), video modeling, social stories, and role playing);

(10) professional educator/staff support (for example: training provided to personnel who work with the student to assure the correct implementation of techniques and strategies described in the IEP); and

(11) teaching strategies based on peer reviewed, research-based practices for students with ASD (for example: those associated with discrete-trial training, visual supports, applied behavior analysis, structured learning, augmentative communication, or social skills training).

(f) If the ARD committee determines that services are not needed in one or more of the areas specified in subsection (e) of this section, the IEP must include a statement to that effect and the basis upon which the determination was made.

(g) If the ARD committee determines that a behavior improvement plan or a behavioral intervention plan is appropriate for a student, that plan must be included as part of the student's IEP and provided to each teacher with responsibility for educating the student.

(h) In accordance with TEC, §29.011 and §29.0111, not later than when a student reaches 14 years of age, the ARD committee must consider, and if appropriate, address:

(1) appropriate student involvement in the student's transition to life outside the public school system;

(2) if the student is younger than 18 years of age, appropriate parental involvement in the student's transition;

(3) if the student is at least 18 years of age, appropriate parental involvement in the student's transition, if the parent is invited to participate by the student or the school district in which the student is enrolled;

(4) any postsecondary education options;
(5) a functional vocational evaluation;
(6) employment goals and objectives;
(7) if the student is at least 18 years of age, the availability of age-appropriate instructional environments;
(8) independent living goals and objectives; and
(9) appropriate circumstances for referring a student or the student's parents to a governmental agency for services.

(i) In accordance with 34 CFR, §300.320(b), beginning not later than the first IEP to be in effect when the student turns 16 years of age, or younger if determined appropriate by the ARD committee, and updated annually thereafter, the IEP must include the following:
(1) appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
(2) the transition services, including courses of study, needed to assist the student in reaching the postsecondary goals developed under paragraph (1) of this subsection.

TAC §89.1055 also located in next section 4b. ADDITIONAL IEP INFORMATION.
located in next section 4. ADDITIONAL IEP INFORMATION (F. - ESY)

TAC §89.1075. General Program Requirements and Local District Procedures – Commensurate Day

(e) Students with disabilities must have available an instructional day commensurate with that of students without disabilities. The ARD committee must determine the appropriate instructional setting and length of day for each student, and these must be specified in the student's IEP.
http://tea.texas.gov/index2.aspx?id=2147495560&menu_id=2147483703&menu_id2=2147483719
When conducting ARD Committee meetings, assessment personnel responsible for student's ARD will ensure that personnel are not mentioned by name as the sole supporter of services for future needs in any portion of the ARD forms, including IEPs and deliberations.

TAC §89.1801 Instructional Requirements for Education Services Provided in a Juvenile Residential Facility.

(g) Length and number of school days required.
(1) The school district in a pre-adjudication secure detention facility or a post-adjudication secure correctional facility shall, at a minimum, provide a seven-hour school day that consists of at least five and one-half hours of required secondary curriculum to students in the facility. For each school year, each school district must operate so that the facility provides for at least 180 days of instruction for students.
(2) The school district in a pre-adjudication secure detention facility or a post-adjudication secure correctional facility shall ensure that students with disabilities are provided instructional days commensurate with those provided to students without disabilities in accordance with requirements contained in §89.1075.

VI. PARENT RIGHTS / PARTICIPATION *(also in Section 7)*

TEC §29.005.

(d) If the child's parent is unable to speak English, the district shall:

(1) 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; or

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

TAC §89.1050. The Admission, Review and Dismissal Committee.

(d) The school district must take steps to ensure that one or both parents are present at each ARD committee meeting or are afforded the opportunity to participate, including notifying the parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed upon time and place. Additionally, a school district must allow parents who cannot attend an ARD committee meeting to participate in the meeting through other methods such as through telephone calls or video conferencing. The school district must provide the parents with written notice of the ARD committee meeting that meets the requirements in 34 CFR, §300.322, at least five school days before the meeting unless the parents agree to a shorter timeframe.

(e) Upon receipt of a written request for an ARD committee meeting from a parent, the school district must:

(1) schedule and convene a meeting in accordance with the procedures in subsection (d) of this section; or

(2) within five school days, provide the parent with written notice explaining why the district refuses to convene a meeting.

(f) If the parent is unable to speak English, the school district must provide the parent with a written notice required under subsection (d) or (e)(2) of this section in the parent's native language, unless it is clearly not feasible to do so. If the parent's native language is not a written language, the school district must take steps to ensure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication so that the parent understands the content of the notice.

(g) All members of the ARD committee must have the opportunity to participate in a collaborative manner in developing the IEP. A decision of the ARD committee concerning required elements of the IEP must be made by mutual agreement 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 who disagrees must be offered a single opportunity to recess and reconvene the ARD committee meeting. The period of time for reconvening the ARD committee meeting must not exceed ten school days, unless the parties mutually agree otherwise. The ARD committee must schedule the reconvened meeting at a mutually agreed upon time and place. The opportunity to recess and reconvene is not required when the student's presence on the campus presents a danger of physical harm to the student or others or when the student has committed an expellable offense or an offense that may lead to a placement in a disciplinary alternative education program. The requirements of this subsection do not prohibit the ARD committee from recessing an ARD committee meeting for reasons other than the failure to reach mutual agreement about all required elements of an IEP.

(2) During the recess, the ARD committee members must consider alternatives, gather additional data, prepare further documentation, and/or obtain additional resource persons who may assist in enabling the ARD committee to reach mutual agreement.

(3) If a recess is implemented as provided in paragraph (1) of this subsection and the ARD committee still cannot reach mutual agreement, the school district must implement the IEP that it has determined to be appropriate for the student. *For more information on Mutual Agreement, see IX.*

(4) Each member of the ARD committee who disagrees with the IEP developed by the ARD committee is entitled to include a statement of disagreement in the IEP.

(h) Whenever a school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of a free appropriate public education to the student, the school district must provide prior written notice as required in 34 CFR, §300.503, including providing the notice in the parent's native language or other mode of communication. This notice must be provided to the parent at least five school days before the school district proposes or refuses the action unless the parent agrees to a shorter timeframe.

3 Prior Notice Attempts to ensure parent participation in the IEP meeting.
The WCSESSA will make advance attempts to notify parents of ARD/IEP meetings and arrange a mutually agreeable time and location.

1. *The first Prior Written Notice of the ARD/IEP meeting form is provided in writing 2 weeks (10 working days) prior to the scheduled ARD/IEP date. This early notice will allow more time to contact the parent and then proceed at the first scheduled date and time. The Notice form includes options to agree to the proposed date, change the date, hold the meeting on the phone or suggest the district proceed without the parent in attendance. A copy of the completed Notice form sent to the parent is maintained in the student eligibility file as documentation.*
2. *The second attempt to notify the parents of the ARD will also be in writing (if there is no response from the parent after the first notice). The WCSESSA will copy the first notice form and send it as the second Notice of ARD/IEP meeting.*
3. *The third Notice contact will be attempted to get parental participation if there is no response from the first two attempts. After 3 attempts and no response, the WCSESSA may go forward with the ARD meeting as scheduled.*

The first attempt MUST be in written form however the staff may call and discuss the proposed date with parents in order to pick a reasonable date for both parties for the written Notice. The second Notice will also be in written form using a copy of the first Notice sent and the third Notice may be a follow-up phone call to home and work. All dates of scheduling attempts and the initials of personnel attempting contact must be documented on the district Notice form and filed in the student eligibility folder.

A. Participation

§300.322 Parent Participation.

(a) WCSESSA responsibility — general. The Wood County SSA must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including--

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b) Information provided to parents.

(1) The notice required under paragraph (a)(1) of this section must--

(i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and

(ii) Inform the parents of the provisions in §300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and §300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).

(2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must--

(i) Indicate--

(A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with §300.320(b); and

(B) That the agency will invite the student; and

(ii) Identifies any other agency that will be invited to send a representative.

(c) Other methods to ensure parent participation. If neither parent can attend an IEP Team meeting, the WCSESSA must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with §300.328 (related to alternative means of meeting participation).

The campus staff will make every effort to accommodate the parents schedule, however, there is no requirement that an IEP meeting must be held outside of regular business hours for the school. OSEP Letter to Thomas (6-3-2008)

(d) Conducting an IEP meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the WCSESSA is unable to convince the parents that they should attend. In this case, the WCSESSA must keep a record of its attempts to arrange a mutually agreed on time and place such as:

(1) Detailed records of telephone calls made or attempted and the results of those calls;

(2) Copies of correspondence sent to the parents and any responses received; and
(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) Use of interpreters or other action, as appropriate. The WCSESSA must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(f) Parent copy of child's IEP. The WCSESSA must give the parent a copy of the child's IEP at no cost to the parent. (Authority: 20 U.S.C. 1414(d)(1)(B)(i))

§300.501 Parent Participation in Meetings.

(b) Parent participation in meetings.

(1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to--
(i) The identification, evaluation, and educational placement of the child; and
(ii) The provision of FAPE to the child.

(2) The WCSESSA must provide notice consistent with §300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section.

(3) A meeting does not include informal or unscheduled conversations involving WCSESSA personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that WCSESSA personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(c) Parent involvement in placement decisions.

(1) The WCSESSA must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.

(2) In implementing the requirements of paragraph (c)(1) of this section, the WCSESSA must use procedures consistent with the procedures described in §300.322(a) through (b)(1). *(found on previous page)*

(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the WCSESSA must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(4) A placement decision may be made by a group without the involvement of a parent, if the WCSESSA is unable to obtain the parent's participation in the decision. In this case, the WCSESSA must have a record of its attempt to ensure their involvement. (Authority: 20 U.S.C. 1414(e), 1415(b)(1))

§300.327 Educational placements.

Consistent with §300.501(c), the WCSESSA must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

§300.328 Alternative means of meeting participation.

When conducting IEP Team meetings and placement meetings pursuant to this subpart, and Subpart E of this part, and carrying out administrative matters under section 615 of the Act (such as scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and the WCSESSA may agree to use alternative means of meeting participation, such as video conferences and conference calls.

B. Transfer of Rights at Age of Majority

§300.320 Definition of individualized education program

(c) Transfer of rights at age of majority. Beginning not later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under §300.520.

§300.520 Transfer of parental rights at age of majority.

(a) General. A State may provide that, when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be

incompetent under State law)--

(1) (i) The WCSESSA must provide any notice required by this part to both the individual and the parents; and

(ii) All other rights accorded to parents under Part B of the Act transfer to the child;

(2) All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and

(3) Whenever a State transfers rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the WCSESSA must notify the individual and the parents of the transfer of rights.

(b) Special rule. A State must establish procedures for appointing the parent of a child with a disability, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B of the Act if, under State law, a child who has reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child's educational program. (Authority: 20 U.S.C. 1415(m))

TEC §29.017.Transfer of Parental Rights at Age of Majority.

(a) 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, shall have the same right to make educational decisions as a student without a disability, except that the WCSESSA shall provide any notice required by this subchapter or 20 U.S.C. Section 1415 to both the student and the parents. All other rights accorded to parents under this subchapter or 20 U.S.C. Section 1415 transfer to the student.

(b) All rights accorded to parents under this subchapter or 20 U.S.C. Section 1415 transfer to students who are incarcerated in an adult or juvenile, state or local correctional institution.

(c) Not later than one year before the 18th birthday of a student with a disability, the school district at which the student is enrolled shall:

(1) provide to the student and the student's parents:

(A) written notice regarding the transfer of rights under this section; and

(B) information and resources regarding guardianship, alternatives to guardianship, including a supported decision-making agreement under Chapter 1357, Estates Code, and other supports and services that may enable the student to live independently; and

(2) ensure that the student's individualized education program includes a statement that the district provided the notice, information, and resources required under Subdivision (1).

(c-1) In accordance with 34 C.F.R. Section 300.520 ~~[300.517]~~, the school district shall provide written notice to ~~[notify]~~ the student and the student's parents of the transfer of rights under this section. The notice must include the information and resources provided under Subsection (c)(1)(B).

(c-2) If a student with a disability or the student's parent requests information regarding guardianship or alternatives to guardianship from the school district at which the student is enrolled, the school district shall provide to the student or parent information and resources on supported decision-making agreements under Chapter 1357, Estates Code.

(c-3) The commissioner shall develop and post on the agency's Internet website a model form for use by school districts in notifying students and parents as required by Subsections (c) and (c-1). The form must include the information and resources described by Subsection (c). The commissioner shall review and update the form, including the information and resources, as necessary.

(d) The commissioner shall develop and post on the agency's Internet website the information and resources described by Subsections (c), (c-1), and (c-2).

(e) Nothing in this section prohibits a student from entering into a supported decision-making agreement under Chapter 1357, Estates Code, after the transfer of rights under this section.

(f) The commissioner shall adopt rules implementing the provisions of 34 C.F.R. Section 300.520(b) ~~[300.517(b)]~~.

SECTION 4. This Act applies beginning with the 2018-2019 school year.

TAC §89.1049. Parental Rights Regarding Adult Students.

(a) In accordance with 34 Code of Federal Regulations (CFR), §300.320(c) and §300.520, and Texas Education Code (TEC), §29.017, beginning at least one year before a student reaches 18 years of age, the student's individualized education program (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, Guardianship, all rights granted to the parent under the Individuals with Disabilities Education Act (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. Beginning with the 2018-2019 school year, the IEP must also

state that the student has been provided information and resources regarding guardianship, alternatives to guardianship, including a supported decision-making agreement under Texas Estates Code, Chapter 1357, and other supports and services that may enable the student to live independently. After the student reaches the age of 18, except as provided by subsection (b) of this section, the WCSESSA shall provide any notice required under IDEA, Part B, to both the adult student and the parent.

(b) In accordance with 34 CFR, §300.520(a)(2), and TEC, §29.017(a), 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 Texas Estates Code, Title 3 ~~the Probate Code, Chapter XIII, Guardianship~~.

(c) In accordance with 34 CFR, §300.520(a)(3), a school district must notify in writing the adult student and parent of the transfer of parental rights, as described in subsections (a) and (b) of this section, 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. Beginning with the 2018-2019 school year, the notice must also include information and resources regarding guardianship, alternatives to guardianship, including a supported decision-making agreement under Texas Estates Code, Chapter 1357, and other supports and services that may enable the student to live independently, and must provide contact information for the parties to use in obtaining additional information.

(d) A notice under IDEA, Part B, which 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 admission, review, and dismissal (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.

(e) Nothing in this section prohibits a supported decision-making agreement or a valid power of attorney from being executed by an individual who holds rights under IDEA, Part B.

For "Alternatives to Guardianship," see **Section 4b.** under **Y. Transition Planning.**

VII. MEMBERSHIP OF THE ARD / IEP COMMITTEE

§300.321 IEP Team.

(a) General. The WCSESSA must ensure that the IEP Team for each child with a disability includes--

(1) The parents of the child;

(2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment); *see TAC §89.1050 below*

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

(4) A representative of the WCSESSA 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 WCSESSA.

Click link for TEA Guidance for Inviting Agency Rep to ARD Meeting.
https://tea.texas.gov/Academics/Special_Student_Populations/Special_Education_SPED/Programs_and_Services/State_Guidance/Guidance_for_Inviting_Agency_Representatives_to_Admission,_Review,_and_Dismissal_Committee_Meeting

In the WCSESSA, this representative is the campus principal or designee approved by the Superintendent as in §300.321 (d). The campus principal is most appropriate because of the responsibility to ensure implementation of the student's IEP. The campus principal is the appropriate representative because of the authority and responsibility to commit district resources and to ensure implementation of the student's IEP. If the principal assigns a designee, the principal's designee will have the same authority to commit resources, however, the principal remains responsible for ensuring the IEP is implemented. The principal is the chair of the meeting and guides the discussion, ensuring parent participation and involvement.

(5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section; *The special education teacher can interpret evaluation or state assessment results unless the IEP team is determining necessary 3 year evaluation needs or results and then the diagnostician or LSSP will be required. The LSSP or counselor will interpret results for students with emotional disturbance.*

(6) At the discretion of the parent or the WCSESSA, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

(7) Whenever appropriate, the child with a disability.

(b) Transition services participants.

(1) In accordance with paragraph (a)(7) of this section, the WCSESSA must invite a child with a disability to attend the child's IEP meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under §300.320(b).

(2) If the child does not attend the IEP Team meeting, the WCSESSA must take other steps to ensure that the child's preferences and interests are considered.

(3) To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of paragraph (b)(1) of this section, the WCSESSA must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

The secondary case manager (diagnostician - VAC – transition specialist) is responsible for inviting officials from other agencies to the IEP meeting if appropriate and obtaining parent/student consent/release of information. The WCSESSA attempts to have representatives from other agencies meet with students and parents prior to the IEP meeting to ensure more quality time to discuss post secondary services and options.

(c) Determination of knowledge and special expertise. The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section must be made by the party (parents or WCSESSA) who invited the individual to be a member of the IEP Team.

(d) Designating a WCSESSA representative. The WCSESSA may designate a WCSESSA member of the IEP Team to also serve as the agency representative, if the criteria in paragraph (a)(4) of this section are satisfied.

(e) IEP Team attendance. *(Excusal)*

(1) A member of the IEP Team described in paragraph (a)(2) through (a)(5) of §300.321, is not required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the WCSESSA agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

If the member's area is not being modified or discussed, the member may be excused for the meeting if the parent and WCSESSA agree in writing on the district form that the members attendance is not necessary.

(2) A member of the IEP Team described in (e)(1) may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if--

(i) The parent, in writing, and the WCSESSA consent to the excusal; and

(ii) The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

The WCSESSA parental informed consent is required in order to excuse an IEP member if their area of the curriculum or related service will be modified or discussed. Parental consent for excusal in (2)(i) must include all elements of informed consent found in Procedural Safeguards section. The WCSESSA will attempt to provide a minimum of 3 days advance written input to the parent to consider excusal unless there are emergency circumstances which cannot be avoided. The parent always has the right not to agree to the excusal. The WCSESSA will not routinely excuse IEP members and each IEP meeting requires either appropriate agreement or consent for the IEP member requesting excusal. Any excusal from the ARD/IEP Meeting will follow exact guidelines in §300.321 (e) (1-2) and be documented in writing on the WCSESSA form provided to you.

(f) Initial IEP meeting for child under Part C. In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services. (Authority: 20 U.S.C. 1414 (d)(1)(B) – (d)(1)(D))

TAC §89.1050 The Admission, Review, and Dismissal (ARD) Committee.

(c) ARD committee membership.

(1) ARD committees must include the following:

(A) the parents of the student;

(B) not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment); who must, to the extent practicable, be a teacher who is responsible for implementing a portion of the student's IEP;

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

(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 students 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 committee described in subparagraphs (B)-(D) and (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 student, including related services personnel, as appropriate;

(G) whenever appropriate, the student with a disability;

(H) to the extent appropriate, with the consent of the parents or a student who has reached the age of majority, a representative of any participating agency that is likely to be responsible for providing or paying for transition services;

(I) a representative from career and technical education (CTE), preferably the teacher, when considering initial or continued placement of a student in CTE; and

(J) a professional staff member who is on the language proficiency assessment committee who may be a member of the committee described in subparagraphs (B) and (C) of this paragraph, if the student is identified as an English language learner.

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

(3) If the student is:

(A) a student with a suspected or documented visual impairment, the ARD committee must 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 must 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 must 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. Also see Section **4b. Additional IEP Requirements**. More information: http://tea.texas.gov/index2.aspx?id=2147498410&ekfxmen_noscript=1&ekfxmensel=e9edebdf8_25769804222_25769804224

(4) An ARD committee member 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.

TEC §75.1023. Provisions for Individuals Who Are Members of Special Populations

(d) (1) The ARD committee shall include a representative from career and technical education, preferably the teacher, when considering initial or continued placement of a student in a career and technical education program.

http://ritter.tea.state.tx.us/rules/tac/chapter075/ch75bb.html

TEC §89.1230(b) Eligible Students with Disabilities. A professional member of the language proficiency assessment committee shall serve on the admission, review, and dismissal (ARD) committee of each limited English proficient student who qualifies for services in the special education program.

VIII. ARD / IEP MEETINGS (Development of the IEP)

All appropriate district forms will be used to document the meeting and decisions. Staff responsibilities are outlined on following pages as well as included in WCSESSA Job Descriptions. The special education staff will provide relevant evaluation and educational data to the ARD/IEP committee as appropriate.
Once the student is determined an eligible special education student, the parent or district staff may request an ARD meeting as needed in the future. An ARD meeting may be requested by contacting the student's special education teacher or case manager.

1. *The diagnostician will collaborate with campus staff to develop the ARD schedule using monthly data printout of annual ARD due dates.*
2. *The diagnostician will complete the Notice of ARD and send the first notice approximately two weeks prior to the due date to allow time to reschedule and provide required notices.(see Procedural Safeguards).*
3. *The diagnostician is responsible for notifying all required members of the ARD and using required district forms.*
4. *The diagnostician is responsible providing a copy of the completed IEP to the parent.*

A. Initial

TEC §29.005.Individualized Education Program.
(a) Before a child is enrolled in a special education program of a WCSESSA, the district shall establish a committee composed of the persons required under 20 U.S.C. Section 1401(11) *(old authority reference number)* to develop the child's individualized education program.
The assigned diagnostician will plan with the staff and parent an agreeable time for the Initial ARD meeting. The WCSESSA will follow all requirements in this document Section 4 including I. through VII. (located on previous pages)

B. Annual Review

The WCSESSA will follow federal and state requirements to conduct an Annual ARD/IEP meeting within 12 months. In the WCSESSA, we conduct Annual ARD meetings prior to the 12 month anniversary date. If the anniversary date falls before the spring semester for a 5 th grader entering 6 th grade or an 8 th grader entering 9 th grade, the WCSESSA, on an individual basis may decide to conduct a spring end of year annual review to prepare the student's IEP for the next campus.

§300.324 Development, review, and revision of IEP
(b) Review and revision of IEPs.

(1) General. The WCSESSA must ensure that, subject to paragraph (b)(2) and (b)(3) of this section, the IEP Team--
(i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and
(ii) Revises the IEP, as appropriate, to address--
(A) Any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate;
(B) The results of any reevaluation conducted under §300.303;
(C) Information about the child provided to, or by, the parents, as described under §300.305(a)(2);
(D) The child's anticipated needs; or
(E) Other matters.

(2) Consideration of special factors. The IEP Team must…
(i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.
(ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;
(iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the

child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

(v) Consider whether the child needs assistive technology devices and services.

(iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode;

(3) Requirement with respect to regular education teacher. A regular education teacher of the child, as a member of the IEP Team, must, consistent with paragraph (a)(3) of this section, participate in the review and revision of the IEP of the child.

§300.116 Placements. *For placement in its entirety, please see LRE in next part of section 4.*
In determining the educational placement of a child with a disability, including a preschool child with a disability, the WCSESSA must ensure that--
(b) The child's placement--
(1) Is determined at least annually;
(2) Is based on the child's IEP; and
(3) Is as close as possible to the child's home, unless the parent agrees otherwise;

C. Reevaluation Planning ARD

§300.324 Development, review, and revision of IEP
(a) (5) Consolidation of IEP Team meetings. To the extent possible, the WCSESSA must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

*The WCSESSA will conduct a Review of Existing Evaluation Data (**described in the FIE Section 2**) prior to additional evaluation taking place. If the student is a special education student and the 3 year reevaluation is due within the next 12 months, the Annual ARD/IEP Committee may conduct the Review of Existing Evaluation Data and plan the evaluation during that Annual ARD Meeting.*

The Case Manager or Diagnostician will contact all other service providers prior to the planning ARD or Annual ARD to gather input and to work toward consolidating all other required evaluations into one comprehensive Full and Individual Evaluation for the student, including Speech, OT/PT, etc..

D. Brief / Revision ARD (New Provisions: Agreements, Amendments)

§300.324 Development, review, and revision of IEP
(a) (4) Agreement.
(i) In making changes to a child's IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the WCSESSA may agree not to convene an IEP meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.
(ii) If changes are made to the child's IEP in accordance with paragraph (a)(4)(i) of this section, the WCSESSA must ensure that the child's IEP Team is informed of those changes.
(5) Consolidation of IEP Team meetings. To the extent possible, the WCSESSA must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.
(6) Amendments. Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting or, as provided in paragraph (a)(4) of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.
Any agreement or amendment to the ARD/IEP Meeting will follow exact guidelines in §300.324 (a) (4 and 6) as listed above. The agreement in §300.324 (a) (4) must be documented in writing on the WCSESSA form provided to you.
a. The campus administrator must approve the decision to complete a proposed amendment to the IEP.
b. Discuss the proposed amendment with appropriate IEP team members including discussion with the parents in person or by phone.
c. Complete the district form provided to you and obtain parent signature of agreement to amend the IEP.

d. Distribute the signed amendment to all IEP team members and implementers.
e. File the original amendment with the parent signature in the student's eligibility form with the Annual IEP being amended.

Changes that require an ARD/IEP meeting. The amendment procedure MAY NOT be used for the following changes:

- *Change in placement decisions*
- *Manifestation Determination, FBA or development of BIP*
- *Change services, time of services, add/drop services (excluding transportation)*
- *Eligibility determination or change*
- *Review lack of progress*
- *Proposing change to State and/or district testing level*

Changes that DO NOT require an ARD/IEP meeting. The amendment procedure MAY be used for the following changes:

- *State and district testing including grade level, expected achievement level*
- *Transportation*
- *Accommodations or revision of existing modifications*

E. Dismissal / Change of Placement / Summary of Performance (SOP)

§300.305 Additional requirements for evaluations and reevaluations.
For §300.305 in its entirety, see Section 2. FIE

(e) Evaluations before change in placement.

(1) Except as provided in paragraph (e)(2) of this section, the WCSESSA must evaluate a child with a disability in accordance with §§300.304 through 300.311 before determining that the child is no longer a child with a disability.

(2) The evaluation described in paragraph (e)(1) of this section is not required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.

(3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, the WCSESSA must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals. *(see Summary of Performance under F. on following pages)*

TAC §89.1225. Testing and Classification of Students.

(k) The ARD committee in conjunction with the language proficiency assessment committee shall determine an appropriate assessment instrument and performance standard requirement for exit under subsection (h) of this section for students for whom those tests would be inappropriate as part of the IEP. The decision to exit a student who receives both special education and special language services from the bilingual education or English as a second language program is determined by the ARD committee in conjunction with the language proficiency assessment committee in accordance with applicable provisions of subsection (h) of this section.

F. Graduation *(see also letter E. Dismissal - e.3. above)*

These Operating Guidelines include information for the new Foundation graduation requirements based on HB 5 passed by the 83rd legislature in 2013. The Minimum, Recommended and Distinguished Programs are still available for students who entered grade 9 before the 2012-2013 school year.

Graduation Rules Simplified: See the TEA Graduation side-by-side chart that compares the new Foundation Program to the old Minimum, Recommended and Distinguished High School Graduation Programs. Click on the link provided and look for Side-by-Side Comparison - Current Graduation Requirements and HB 5 Requirements to be Implemented Beginning in 2014-2015.
http://tea.texas.gov/graduation.aspx

TAC §74.1021. TRANSITION TO THE FOUNDATION HIGH SCHOOL PROGRAM.

(a) A school district shall allow a student who entered Grade 9 before the 2012-2013 school year to complete the curriculum requirements required for high school graduation under:

(1) the foundation high school program by satisfying the requirements adopted by the State Board of Education in this chapter, if the student chooses during the 2014-2015 school year to take courses under this program;
(2) the minimum high school program by satisfying the requirements of §74.62 of this title (relating to Minimum High School Program), if the student was participating in that program before the 2014-2015 school year;
(3) the recommended high school program by satisfying the requirements of §74.63 of this title (relating to Recommended High School Program), if the student was participating in that program before the 2014-2015 school year; or
(4) the advanced high school program by satisfying the requirements of §74.64 of this title (relating to Distinguished Achievement High School Program--Advanced High School Program), if the student was participating in that program before the 2014-2015 school year.

(b) A school district shall allow a student who entered Grade 9 in the 2012-2013 or 2013-2014 school year to complete the curriculum requirements required for high school graduation under:
(1) the foundation high school program by satisfying the requirements adopted by the State Board of Education in this chapter, if the student chooses during the 2014-2015 school year to take courses under this program;
(2) the minimum high school program by satisfying the requirements of §74.72 of this title (relating to Minimum High School Program), if the student was participating in that program before the 2014-2015 school year;
(3) the recommended high school program by satisfying the requirements of §74.73 of this title (relating to Recommended High School Program), if the student was participating in that program before the 2014-2015 school year; or
(4) the advanced high school program by satisfying the requirements of §74.74 of this title (relating to Distinguished Achievement High School Program--Advanced High School Program), if the student was participating in that program before the 2014-2015 school year.

(c) A student who entered Grade 9 prior to the 2014-2015 school year may, at any time prior to graduation and upon request, choose to complete the curriculum requirements required for high school graduation under a different program than that selected by the student during the 2014-2015 school year.

TAC §74.11. HIGH SCHOOL GRADUATION REQUIREMENTS.

(a) To receive a high school diploma, a student entering Grade 9 in the 2014-2015 school year and thereafter must complete the following:
(1) in accordance with subsection (c) of this section, requirements of the Foundation High School Program specified in §74.12 of this title (relating to Foundation High School Program); [and]
(2) testing requirements for graduation as specified in Chapter 101 of this title (relating to Assessment); and [.]
(3) demonstrated proficiency, as determined by the district in which the student is enrolled, in delivering clear verbal messages; choosing effective nonverbal behaviors; listening for desired results; applying valid critical-thinking and problem-solving processes; and identifying, analyzing, developing, and evaluating communication skills needed for professional and social success in interpersonal situations, group interactions, and personal and professional presentations.

(b) A school district shall clearly indicate the distinguished level of achievement under the Foundation High School Program, an endorsement, and a performance acknowledgment on the diploma and transcript or academic achievement record (AAR) of a student who satisfies the applicable requirements.

(c) A student entering Grade 9 in the 2014-2015 school year and thereafter shall enroll in the courses necessary to complete the curriculum requirements for the Foundation High School Program specified in §74.12 of this title and the curriculum requirements for at least one endorsement specified in §74.13 of this title (relating to Endorsements).

(d) A student may graduate under the Foundation High School Program without earning an endorsement if, after the student's sophomore year:
(1) the student and the student's parent or person standing in parental relation to the student are advised by a school counselor of the specific benefits of graduating from high school with one or more endorsements; and
(2) the student's parent or person standing in parental relation to the student files with a school counselor written permission, on a form adopted by the Texas Education Agency (TEA), allowing the student to graduate under the Foundation High School Program without earning an endorsement.

(e) ... The special education reference is listed below. To read the full text for this section, you may click on this link: http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=19&pt=2&ch=74&sch=B&rl=Y

TAC §74.12. FOUNDATION HIGH SCHOOL PROGRAM.

(a) Credits. A student must earn at least 22 credits to complete the Foundation High School Program.

(b) Core courses. A student must demonstrate proficiency in the following *...etc. The special education reference is listed below. To read the full text for this section, you may click on this link: http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=19&pt=2&ch=74&sch=B&rl=Y*

(C) The determination regarding a student's ability to complete the second credit of LOTE must be agreed to by:

(i) the teacher of the first LOTE credit course, the principal or designee, and the student's parent or person standing in parental relation;

(ii) the student's admission, review, and dismissal (ARD) committee if the student receives special education services under the TEC, Chapter 29, Subchapter A; or

(iii) the committee established for the student under Section 504, Rehabilitation Act of 1973 (29 United States Code, Section 794) if the student does not receive special education services under the TEC, Chapter 29, Subchapter A, but is covered by the Rehabilitation Act of 1973.

(D) A student, who due to a disability, is unable to complete two credits in the same language in a language other than English, may substitute a combination of two credits from English language arts, mathematics, science, or social studies or two credits in career and technical education or technology applications for the LOTE credit requirements. The determination regarding a student's ability to complete the LOTE credit requirements will be made by:

(i) the student's ARD committee if the student receives special education services under the TEC, Chapter 29, Subchapter A; or

(ii) the committee established for the student under Section 504, Rehabilitation Act of 1973 (29 United States Code (USC), §794) if the student does not receive special education services under the TEC, Chapter 29, Subchapter A, but is covered by the Rehabilitation Act of 1973.

(E) and (F) ....

(G) A student who is unable to participate in physical activity due to disability or illness may substitute an academic elective credit (English language arts, mathematics, science, or social studies) or a course that is offered for credit as provided by the TEC, §28.002 (g-1), for the physical education credit requirement. The determination regarding a student's ability to participate in physical activity will be made by:

(i) the student's ARD committee if the student receives special education services under the TEC, Chapter 29, Subchapter A;

(ii) the committee established for the student under Section 504, Rehabilitation Act of 1973 (29 USC, §794) if the student does not receive special education services under the TEC, Chapter 29, Subchapter A, but is covered by the Rehabilitation Act of 1973; or

(iii) a committee established by the school district of persons with appropriate knowledge regarding the student if each of the committees described by clauses (i) and (ii) of this subparagraph is inapplicable. This committee shall follow the same procedures required of an ARD or a Section 504 committee.

TAC §74.13. ENDORSEMENTS.

(a) A student shall specify in writing an endorsement the student intends to earn upon entering Grade 9.

(b) A district shall permit a student to enroll in courses under more than one endorsement before the student's junior year and to choose, at any time, to earn an endorsement other than the endorsement the student previously indicated. This section does not entitle a student to remain enrolled to earn more than 26 credits.

(c) A student must earn at least 26 credits to earn an endorsement. *The special education reference is listed below. To read the full text for this section, you may click on this link: http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=19&pt=2&ch=74&sch=B&rl=Y*

TAC §74.14. PERFORMANCE ACKNOWLEDGMENTS.

(a) A student may earn a performance acknowledgment on the student's diploma and transcript for outstanding performance in a dual credit course by successfully completing... *The special education reference is listed below. To read the full text for this section, you may click on this link: http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=19&pt=2&ch=74&sch=B&rl=Y*

TEC §28.025. HIGH SCHOOL DIPLOMA AND CERTIFICATE; ACADEMIC ACHIEVEMENT RECORD.

(a) The State Board of Education by rule shall determine curriculum requirements for the foundation high school program that are consistent with the required curriculum under Section 28.002. The State Board of Education shall designate the specific courses in the foundation curriculum under Section 28.002(a)(1) required under the foundation high school program. Except as provided by this section, the State Board of Education may not designate a specific course or a specific number of credits in the enrichment curriculum as requirements for the program.

(b) A school district shall ensure that each student, on entering ninth grade, indicates in writing an endorsement under Subsection (c-1) that the student intends to earn. A district shall permit a student to choose, at any time, to earn an endorsement other than the endorsement the student previously indicated. A student may graduate under the foundation high school program without earning an endorsement if, after the student's sophomore year:

(1) the student and the student's parent or person standing in parental relation to the student are advised by a school counselor of the specific benefits of graduating from high school with one or more endorsements; and

(2) the student's parent or person standing in parental relation to the student files with a school counselor written permission, on a form adopted by the agency, allowing the student to graduate under the foundation high school program without earning an endorsement.

(b-1) The State Board of Education by rule shall require that the curriculum requirements for the foundation high school program under Subsection (a) include a requirement that students successfully complete:

(1) four credits in English language arts under Section 28.002(a)(1)(A), including one credit in English I, one credit in English II, one credit in English III, and one credit in an advanced English course authorized under Subsection (b-2);

(2) three credits in mathematics under Section 28.002(a)(1)(B), including one credit in Algebra I, one credit in geometry, and one credit in any advanced mathematics course authorized under Subsection (b-2);

(3) three credits in science under Section 28.002(a)(1)(C), including one credit in biology, one credit in any advanced science course authorized under Subsection (b-2), and one credit in integrated physics and chemistry or in an additional advanced science course authorized under Subsection (b-2);

(4) three credits in social studies under Section 28.002(a)(1)(D), including one credit in United States history, at least one-half credit in government and at least one-half credit in economics, and one credit in world geography or world history;

(5) except as provided under Subsections (b-12), (b-13), and (b-14), two credits in the same language in a language other than English under Section 28.002(a)(2)(A);

(6) five elective credits;

(7) one credit in fine arts under Section 28.002(a)(2)(D); and

(8) except as provided by Subsection (b-11), one credit in physical education under Section 28.002(a)(2)(C)

etc... The special education reference is listed below. To read the full text for this section, you may click on this link and select Chapter 28, and then 28.025: http://www.statutes.legis.state.tx.us/?link=ED

(b-11) In adopting rules under Subsection (b-1), the State Board of Education shall allow a student who is unable to participate in physical activity due to disability or illness to substitute one credit in English language arts, mathematics, science, or social studies, one credit in a course that is offered for credit as provided by Section 28.002(g-1), or one academic elective credit for the physical education credit required under Subsection (b-1)(8). A credit allowed to be substituted under this subsection may not also be used by the student to satisfy a graduation requirement other than completion of the physical education credit. The rules must provide that the determination regarding a student's ability to participate in physical activity will be made by:

(1) if the student receives special education services under Subchapter A, Chapter 29, the student's admission, review, and dismissal committee;

(2) if the student does not receive special education services under Subchapter A, Chapter 29, but is covered by Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), the committee established for the student under that Act; or

(3) if each of the committees described by Subdivisions (1) and (2) is inapplicable, a committee established by the school district of persons with appropriate knowledge regarding the student.

(b-14) In adopting rules under Subsection (b-1), the State Board of Education shall allow a student who, due to disability, is unable to complete two courses in the same language in a language other than English, as provided under Subsection (b-1)(5), to substitute for those credits two credits in English language arts,

mathematics, science, or social studies or two credits in career and technology education, technology applications, or other academic electives. A credit allowed to be substituted under this subsection may not also be used by the student to satisfy a graduation credit requirement other than credit for completion of a language other than English. The rules must provide that the determination regarding a student's ability to participate in language-other-than-English courses will be made by:

(1) if the student receives special education services under Subchapter A, Chapter 29, the student's admission, review, and dismissal committee; or

(2) if the student does not receive special education services under Subchapter A, Chapter 29, but is covered by Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), the committee established for the student under that Act.

(c) A person may receive a diploma if the person is eligible for a diploma under Section 28.0251. In other cases, a student may graduate and receive a diploma only if...

(2) the student successfully completes an individualized education program developed under §29.005

(c-7) Subject to Subsection (c-8), a student who is enrolled in a special education program under Subchapter A, Chapter 29, may earn an endorsement on the student's transcript by:

(1) successfully completing, with or without modification of the curriculum:

(A) the curriculum requirements identified by the State Board of Education under Subsection (a); and

(B) the additional endorsement curriculum requirements prescribed by the State Board of Education under Subsection (c-2); and

(2) successfully completing all curriculum requirements for that endorsement adopted by the State Board of Education:

(A) without modification of the curriculum; or

(B) with modification of the curriculum, provided that the curriculum, as modified, is sufficiently rigorous as determined by the student's admission, review, and dismissal committee.

(c-8) For purposes of Subsection (c-7), the admission, review, and dismissal committee of a student in a special education program under Subchapter A, Chapter 29, shall determine whether the student is required to achieve satisfactory performance on an end-of-course assessment instrument to earn an endorsement on the student's transcript.

(f) A school district shall issue a certificate of attendance to a student who receives special education services under Subchapter A, Chapter 29, and who has completed four years of high school but has not completed the student's individualized education program. A school district shall allow a student who receives a certificate to participate in a graduation ceremony with students receiving high school diplomas. A student may participate in only one graduation ceremony under this subsection. This subsection does not preclude a student from receiving a diploma under Subsection (c)(2).

TAC §89.1070. Graduation Requirements.

(a) Graduation with a regular high school diploma under subsections (b)(1) or (2)(D), (g)(1), (g)(2), (g)(3), or (g)(4)(D) of this section terminates a student's eligibility for special education services under this subchapter and Part B of the Individuals with Disabilities Education Act and entitlement to the benefits of the Foundation School Program, as provided in Texas Education Code (TEC), §42.003(a).

(b) A student entering Grade 9 in the 2014-2015 school year and thereafter who receives special education services may graduate and be awarded a regular high school diploma if the student meets one of the following conditions.

(1) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-118, 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation under the Foundation High School Program specified in §74.12 of this title (relating to Foundation High School Program) applicable to students in general education as well as satisfactory performance as established in the TEC, Chapter 39, on the required state assessments, unless the student's admission, review, and dismissal (ARD) committee has determined that satisfactory performance on the required state assessments is not necessary for graduation.

(2) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-118, 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation under the Foundation High School Program specified in §74.12 of this title through courses, one or more of which contain modified curriculum that is aligned to the standards applicable to students in general education, as well as satisfactory performance as established in the TEC, Chapter 39, on the required state assessments, unless the student's ARD committee has determined that satisfactory performance on the required state assessments is not necessary for graduation. The student must also

successfully complete the student's individualized education program (IEP) and meet one of the following conditions.

(A) Consistent with the IEP, the student has obtained full-time employment, based on the student's abilities and local employment opportunities, in addition to mastering sufficient self-help skills to enable the student to maintain the employment without direct and ongoing educational support of the local school district.

(B) Consistent with the IEP, the student has demonstrated mastery of specific employability skills and self-help skills that do not require direct ongoing educational support of the local school district.

(C) The student has access to services that 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.

(D) The student no longer meets age eligibility requirements.

(c) A student receiving special education services may earn an endorsement under §74.13 of this title (relating to Endorsements) if the student:

(1) satisfactorily completes the requirements for graduation under the Foundation High School Program specified in §74.12 of this title as well as the additional credit requirements in mathematics, science, and elective courses as specified in §74.13(e) of this title with or without modified curriculum;

(2) satisfactorily completes the courses required for the endorsement under §74.13(f) of this title without any modified curriculum; and

(3) performs satisfactorily as established in the TEC, Chapter 39, on the required state assessments.

(d) Notwithstanding subsection (c)(3) of this section, a student receiving special education services classified in Grade 11 or 12 ~~during the 2014-2015, 2015-2016, or 2016-2017 school year~~ who has taken each of the state assessments required by Chapter 101, Subchapter CC, of this title (relating to Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program) or Subchapter DD of this title (relating to Commissioner's Rules Concerning Substitute Assessments for Graduation) but failed to achieve satisfactory performance on no more than two of the assessments is eligible to receive an endorsement if the student has met the requirements in subsection (c)(1) and (2) of this section.

(e) In order for a student receiving special education services to use a course to satisfy both a requirement under the Foundation High School Program specified in §74.12 of this title and a requirement for an endorsement under §74.13 of this title, the student must satisfactorily complete the course without any modified curriculum.

(f) A student receiving special education services who entered Grade 9 before the 2014-2015 school year may graduate and be awarded a high school diploma under the Foundation High School Program as provided in §74.1021 of this title (relating to Transition to the Foundation High School Program), if the student's ARD committee determines that the student should take courses under that program and the student satisfies the requirements of that program. Subsections (c) and (d) of this section apply to a student transitioning to the Foundation High School Program under this subsection. As the TEC, §28.0258 and §39.025(a-2), modify the state assessment requirements applicable to students in general education, a student receiving special education services who is classified in Grade 11 or 12 ~~during the 2014-2015, 2015-2016, or 2016-2017 school year~~ who has taken each of the state assessments required by Chapter 101, Subchapter CC, of this title (relating to Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program) or Subchapter DD of this title (relating to Commissioner's Rules Concerning Substitute Assessments for Graduation) but failed to achieve satisfactor performance on no more than two of the assessments may graduate if the student has satisfied all other applicable graduation requirements.

(g) A student receiving special education services who entered Grade 9 before the 2014-2015 school year may graduate and be awarded a regular high school diploma if the student meets one of the following conditions.

(1) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-118, 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation (under the recommended or distinguished achievement high school programs in Chapter 74, Subchapter F, of this title (relating to Graduation Requirements, Beginning with School Year 2007-2008) or Chapter 74, Subchapter G, of this title (relating to Graduation Rrequirements, Beginning with School Year 2012-2013) as applicable, including satisfactory performance as established in the TEC, Chapter 39, on the required state assessments.

(2) Notwithstanding paragraph (1) of this subsection, as the TEC, §28.0258 and §39.025(a-2), modify the state assessment requirements applicable to students in general education, a student receiving special education services who is classified in Grade 11 or 12 ~~during the 2014-2015, 2015-2016, or 2016-2017 school year~~ may graduate under the recommended or distinguished achievement high school program, as applicable, if the student has taken each of the state assessments required by Chapter 101, Subchapter CC, of this title (relating to Commissioner's Rules Concerning Implementation of the Academic Content Areas

Testing Program) or Subchapter DD of this title (relating to Commissioner's Rules Concerning Substitute Assessments for Graduation) but failed to achieve satisfactory performance on no more than two of the assessments and has met all other applicable graduation requirements in paragraph (1) of this subsection.

(3) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-118, 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation (under the minimum high school program in Chapter 74, Subchapter F or G, of this title), as applicable, including participation in required state assessments. The student's ARD committee will determine whether satisfactory performance on the required state assessments is necessary for graduation.

(4) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-118, 126-128, and 130 of this title through courses, one or more of which contain modified content that is aligned to the standards required under the minimum high school program in Chapter 74, Subchapter F or G, of this title, as applicable, as well as the satisfactorily completed credit requirements under the minimum high school program, including participation in required state assessments. The student's ARD committee will determine whether satisfactory performance on the required state assessments is necessary for graduation. The student graduating under this subsection must also successfully complete the student's IEP and meet one of the following conditions:

(A) Consistent with the IEP, the student has obtained full-time employment, based on the student's abilities and local employment opportunities, in addition to mastering sufficient self-help skills to enable the student to maintain the employment without direct and ongoing educational support of the local school district.

(B) Consistent with the IEP, the student has demonstrated mastery of specific employability skills and self-help skills that do not require direct ongoing educational support of the local school district.

(C) The student has access to services that 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.

(D) The student no longer meets age eligibility requirements.

(h) All students graduating under this section must be provided with a summary of academic achievement and functional performance as described in 34 Code of Federal Regulations (CFR), §300.305(e)(3). This summary must 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(e)(1), must be included as part of the summary for a student graduating under subsections (b)(2)(A), (B), or (C) or (g)(4)(A), (B), or (C) of this section.

This Summary of Performance (SOP) will be completed prior to graduation using the district approved form. (Agency input will be requested upon parent/adult student consent, Summary of Performance is supported with information included in student's IEP/transition supplement.)

(i) Students who participate in graduation ceremonies but who are not graduating under subsections (b)(2)(A), (B), or (C) or (g)(4)(A), (B), or (C) of this section and who will remain in school to complete their education do not have to be evaluated in accordance with subsection (h) of this section.

(j) Employability and self-help skills referenced under subsections (b)(2) and (g)(4) of this section are those skills directly related to the preparation of students for employment, including general skills necessary to obtain or retain employment.

(k) For students who receive a diploma according to subsections (b)(2)(A), (B), or (C) or (g)(4)(A), (B), or (C) of this section, the ARD committee must 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.

(l) For purposes of this section, modified curriculum and modified content refer to any reduction of the amount or complexity of the required knowledge and skills in Chapters 110-118, 126-128, and 130 of this title. Substitutions that are specifically authorized in statute or rule must not be considered modified curriculum or modified content.

(89.1035 age ranges - Section 3)

Graduation options for students with disabilities receiving special education services who entered grade 9 before the 2011-2012 school year. *Division 2. Participation and Assessment Requirements for Graduation: http://ritter.tea.state.tx.us/rules/tac/chapter101/*

SB 149 - Individual Graduation Committees (IGC) Frequently Asked Questions. *Click on link below for specific answers to questions regarding special education students. Choose the IGC link. http://tea.texas.gov/graduation.aspx*

TEC §28.0212. Personal Graduation Plan

(a) A principal shall designate a guidance counselor, teacher, or other appropriate individual to develop and administer a personal graduation plan for each student enrolled in a junior high, middle, or high school who:
(1) does not perform satisfactorily on an assessment instrument administered under Subchapter B, Chapter 39 (TAKS); or
(2) is not likely to receive a high school diploma before the fifth school year following the student's enrollment in grade level nine, as determined by the district.
(b) A personal graduation plan must:
(1) identify educational goals for the student;
(2) include diagnostic information, appropriate monitoring and intervention, and other evaluation strategies;
(3) include an intensive instruction program described by Section 28.0213;
(4) address participation of the student's parent or guardian, including consideration of the parent's or guardian's educational expectations for the student; and
(5) provide innovative methods to promote the student's advancement, including flexible scheduling, alternative learning environments, on-line instruction, and other interventions that are proven to accelerate the learning process and have been scientifically validated to improve learning and cognitive ability.
(c) Notwithstanding Subsection (b), a student's individualized education program developed under Section 29.005 may be used as the student's personal graduation plan under this section.

Graduation Ceremonies.
Participation of students with disabilities in graduation ceremonies.
TEC §28.025 (f) A school district shall issue a certificate of attendance to a student who receives special education services under Subchapter A, Chapter 29, and who has completed four years of high school but has not completed the student's individualized education program. A school district shall allow a student who receives a certificate to participate in a graduation ceremony with students receiving high school diplomas. A student may participate in only one graduation ceremony under this subsection. This subsection does not preclude a student from receiving a diploma under Subsection (c)(2).

The WCSESSA will discuss graduation ceremonies and certificate of attendance during the Annual ARD/IEP meeting for students not completing their IEP but wishing to participate in the graduation ceremony with their classmates. At the annual ARD meeting beginning the 8 th grade year provide the following information to parents: a student who has completed 4 years of high school but has not completed the IEP may elect to participate in a graduation ceremony with his class. The student shall receive a certificate of attendance. The student shall receive a diploma upon completion of the IEP. By law, a student may participate in only one graduation ceremony.

TAC §74.71 HIGH SCHOOL GRADUATION REQUIREMENTS
To read the full text for this section, you may click on this link: http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=19&pt=2&ch=74&sch=G&rl=Y

TAC §74.72. MINIMUM HIGH SCHOOL PROGRAM.

The special education reference is listed below in (F). To read the full text for this section, you may click on this link: http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=19&pt=2&ch=74&sch=G&rl=Y

(F) A student who is unable to participate in physical activity due to disability or illness may substitute an academic elective credit (English language arts, mathematics, science, or social studies) for the physical education credit requirement. The determination regarding a student's ability to participate in physical activity will be made by:
(i) the student's admission, review, and dismissal (ARD) committee if the student receives special education services under the Texas Education Code (TEC), Chapter 29, Subchapter A;
(ii) the committee established for the student under Section 504, Rehabilitation Act of 1973 (29 United States Code, §794) if the student does not receive special education services under the TEC, Chapter 29, Subchapter A, but is covered by the Rehabilitation Act of 1973; or
(iii) a committee established by the school district of persons with appropriate knowledge regarding the student if each of the committees described by clauses (i) and (ii) of this subparagraph is inapplicable.

This committee shall follow the same procedures required of an ARD or a Section 504 committee.

The WCSESSA encourages student involvement in the ARD/IEP meeting no later than the 8th grade to ensure not only the parent but also the student understands the differences in the Minimum and Recommended High School Programs. http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=19&pt=2&ch=74&sch=G&rl=Y

TAC §74.73. RECOMMENDED HIGH SCHOOL PROGRAM.

The special education reference is listed below in (G). To read the full text for this section, you may click on this link: http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=19&pt=2&ch=74&sch=G&rl=Y

(G) A student who is unable to participate in physical activity due to disability or illness may substitute an academic elective credit (English language arts, mathematics, science, or social studies) for the physical education credit requirement. The determination regarding a student's ability to participate in physical activity will be made by:

(i) the student's admission, review, and dismissal (ARD) committee if the student receives special education services under the Texas Education Code, Chapter 29, Subchapter A;

(ii) the committee established for the student under Section 504, Rehabilitation Act of 1973 (29 United States Code, §794) if the student does not receive special education services under the TEC, Chapter 29, Subchapter A, but is covered by the Rehabilitation Act of 1973; or

(iii) a committee established by the school district of persons with appropriate knowledge regarding the student if each of the committees described by clauses (i) and (ii) of this subparagraph is inapplicable. This committee shall follow the same procedures required of an ARD or a Section 504 committee.

TAC §74.74. DISTINGUISHED ACHIEVEMENT HIGH SCHOOL PROGRAM - ADVANCED HIGH SCHOOL PROGRAM.

The special education reference is listed below in (G). To read the full text for this section, you may click on this link: http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=19&pt=2&ch=74&sch=G&rl=Y

(G) A student who is unable to participate in physical activity due to disability or illness may substitute an academic elective credit (English language arts, mathematics, science, or social studies) for the physical education credit requirement. The determination regarding a student's ability to participate in physical activity will be made by:

(i) the student's admission, review, and dismissal (ARD) committee if the student receives special education services under the Texas Education Code (TEC), Chapter 29, Subchapter A;

(ii) the committee established for the student under Section 504, Rehabilitation Act of 1973 (29 United States Code, §794) if the student does not receive special education services under the TEC, Chapter 29, Subchapter A, but is covered by the Rehabilitation Act of 1973; or

(iii) a committee established by the school district of persons with appropriate knowledge regarding the student if each of the committees described by clauses (i) and (ii) of this subparagraph is inapplicable. This committee shall follow the same procedures required of an ARD or a Section 504 committee.

TAC §101.4003. Texas Assessment of Knowledge and Skills Exit-Level Alternate Assessments.

(a) In accordance with the Texas Education Code (TEC), Chapter 39, Subchapter B, the commissioner of education adopts certain assessments as provided in the figure in this subsection as alternate assessments that a person may use in place of corresponding Texas Assessment of Knowledge and Skills (TAKS) exit-level assessments beginning in the fall of 2017. Attached Graphic – go to this link to see the graphic: http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=19&pt=2&ch=101&rl=4003

(b) An eligible person who has met the passing standard on a state-approved alternate exit-level assessment as set by the commissioner and provided in the figure in subsection (a) of this section in a particular subject area has satisfied the exit-level testing requirement in that subject area.

(c) A person is eligible to substitute an alternate exit-level assessment for a TAKS exit-level assessment for purposes of this subchapter if the person was first enrolled in Grade 9 prior to the 2011-2012 school year or first enrolled in Grade 10 or above in the 2011-2012 school year. *Source Note: 38 TexReg 9024; amended to be effective November 5, 2017, 42 TexREg 6144.*

For all current Chapter 101 Commissioner's Rules: http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=19&pt=2&ch=101
For current Commissioner's Rules Concerning Substitute Assessments for Graduation go to this link: http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=19&pt=2&ch=101&sch=DD&rl=Y

TAC §74.1027. Diplomas for Certain Individuals Who Entered Grade 9 Before 2011-2012 School Year.
https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=19&pt=2&ch=74

See next ARD/IEP Section for exemption from physical education for graduation
See next ARD/IEP Section for State Assessment (TAKS, EOC, STAAR) and District Wide Assessments.

G. Individual Graduation Committee

TEC §74.1025
(n) A student receiving special education services is not subject to the individual graduation committee requirements in the TEC, §28.0258, or the provisions of this section. As provided in §89.1070 of this title (relating to Graduation Requirements) and §101.3023 of this title (relating to Participation and Graduation Assessment Requirements for Students Receiving Special Education Services) a student's admission, review, and dismissal (ARD) committee determines whether a student is required to achieve satisfactory performance on an EOC assessment to graduate.

TEC §28.0258. HIGH SCHOOL DIPLOMA AWARDED ON BASIS OF INDIVIDUAL GRADUATION COMMITTEE REVIEW.
(a) This section applies only to an 11th or 12th grade student who has failed to comply with the end-of-course assessment instrument performance requirements under Section 39.025 for not more than two courses.

IX. MUTUAL AGREEMENT / 10 DAY RECESS / FACILITATION

TEC §29.019. INDIVIDUALIZED EDUCATION PROGRAM FACILITATION.
(a) The agency shall provide information to parents regarding individualized education program facilitation as an alternative disputer resolution method that may be used to avoid a potential dispute between a school district and a parent of a student with a disability. A district that chooses to use individualized education program facilitation shall provide information to parents regarding individualized education program facilitation. The information:
  (1) must be included with other information provided to the parent of a student with a disability, although it may be provided as a separate document; and
  (2) may be provided in a written or electronic format.
(b) Information provided by the agency under this section must indicate that individualized education program facilitation is an alternative disputer resolution method that some districts may choose to provide.
(c) If a school district chooses to offer individualized education program facilitation as an alternative disputer resolution method:
  (1) the district may determine whether to use independent contractors, district employees, or other qualified individuals as facilitators;
  (2) the information provided by the district under this section must include a description of any applicable procedures for requesting the facilitation; and
  (3) the facilitation must be provided at no cost to a parent.
(d) The use of any alternative dispute resolution method, including individualized education program facilitation, must be voluntary on the part of the participants, and the use or availability of any such method may not in any manner be used to deny or delay the right to pursue a special education complaint, mediation, or due process hearing in accordance with federal law.
(e) Nothing in this section prohibits a school district from using individualized education program facilitation as the district's preferred method of conducting initial and annual admission, review, and dismissal committee meetings.

(f) The commissioner shall adopt rules necessary to implement this section.

TEC §29.020. INDIVIDUALIZED EDUCATION PROGRAM FACILITATION PROJECT.

(a) The agency shall develop rules in accordance with this secton applicable to the administration of a state individualized education program facilitation project. The program shall include the provision of an independent individualized education program facilitator to facilitate an admission, review, and dismissal committee meeting with parties who are in a dispute about decisions relating to the provision of a free qppropriate public education to a student with a disability. Facilitation implemented under the project must comply with rules developed under this subsection.

(b) The rules must include:
(1) a definition of independent individualized education program facilitation;
(2) forms and procedures for requesting, conducting, and evaluating independent individualized education program facilitation;
(3) training, knowledge, experience, and performance requirements for independent facilitators; and
(4) conditions required to be met in order for the agency to provide individualized education program facilitation at no cost to the parties.

(c) If the commissioner determines that adequate funding is available, the commissioner may authorize the use of federal funds to implement the individualized education program facilitation project in accordance with this section.

(d) The commissioner shall adopt rules necessary to implement this section..

SECTION 2. This Act applies beginning with the 2014-2015 school year.

TAC §89.1196. Individualized Education Program Facilitation.

(a) For the purpose of this section and Texas Education Code, §29.019, individualized education program (IEP) facilitation refers to a method of alternative dispute resolution that involves the use of a trained facilitator to assist an admission, review, and dismissal (ARD) committee in developing an IEP for a student with a disability. The facilitator uses facilitation techniques to help the committee members communicate and collaborate effectively. While public education agencies are not required to offer IEP facilitation as an alternative dispute resolution method, the Texas Education Agency (TEA) encourages the use of IEP facilitation as described in this section.

(b) A public education agency is not prohibited from incorporating elements of IEP facilitation into ARD committee meetings that are conducted without the assistance of a facilitator as described in this section. For example, a public education agency may provide training on communication skills, conflict management, or meeting effectiveness to individuals who participate in ARD committee meetings to enhance collaboration and efficiency in those meetings.

(c) A public education agency that chooses to offer IEP facilitation under this section may determine whether to use independent contractors, employees, or other qualified individuals as facilitators. At a minimum, an individual who serves as a facilitator must:
(1) have demonstrated knowledge of federal and state requirements relating to the provision of special education and related services to students with disabilities;
(2) have demonstrated knowledge of and experience with the ARD committee meeting process;
(3) have completed 18 hours of training in IEP facilitation, consensus building, and/or conflict resolution; and
(4) complete continuing education as determined by the public education agency.

(d) A public education agency that chooses to offer IEP facilitation under this section must ensure that:
(1) participation is voluntary on the part of the parties;
(2) the facilitation is provided at no cost to parents; and
(3) the process is not used to deny or delay the right to pursue a special education complaint, mediation, or a due process hearing in accordance with Part B of the Individuals with Disabilities Education Act (IDEA) and this division.

(e) A public education agency that chooses to offer IEP facilitation under this section must develop written policies and procedures that include:
(1) the procedures for requesting facilitation;
(2) facilitator qualifications, including whether facilitators are independent contractors, employees, or other qualified individuals;
(3) the process for assigning a facilitator;
(4) the continuing education requirements for facilitators; and
(5) a method for evaluating the effectiveness of the facilitation services and the individual facilitators.

(f) A public education agency that chooses to offer IEP facilitation under this section must provide parents with information about the process, including a description of the procedures for requesting IEP facilitation and information related to facilitator qualifications. This information must be included when a copy of the procedural safeguards notice under 34 Code of Federal Regulations (CFR), §300.504 is provided to parents, although this information may be provided as a separate document and may be provided in a written or electronic format.

(g) A facilitator under this section must not be a member of the student's ARD committee, must not have any decision-making authority over the committee, and must remain impartial to the topics under discussion. The facilitator must assist with the overall organization and conduct of the ARD committee meeting by:
(1) assisting the committee in establishing an agenda and setting the time allotted for the meeting;
(2) assisting the committee in establishing a set of guidelines for the meeting;
(3) guiding the discussion and keeping the focus on developing a mutually agreed upon IEP for the student;
(4) ensuring that each committee member has an opportunity to speak and be heard;
(5) helping to resolve disagreements that arise; and
(6) helping to keep the ARD committee on task and within the time allotted for the meeting.

(h) Promptly after being assigned to facilitate an ARD committee meeting, or within a timeline established under the public education agency's procedures, the facilitator must contact the parents and public education agency representative to clarify the issues, gather necessary information, and explain the IEP facilitation process.

(i) A public education agency that chooses to offer IEP facilitation under this section must ensure that facilitators protect the confidentiality of personally identifiable information about the student and comply with the requirements in the Family Educational Rights and Privacy Act regulations, 34 CFR, Part 99, relating to the disclosure and redisclosure of personally identifiable information from a student's education record.

(j) The TEA will develop information regarding IEP facilitation as an alternative dispute resolution method, and such information will be available upon request from the TEA and on the TEA website.

For additional TEA Guidance and to obtain Facilitation Request Forms go to:
https://www.esc20.net/page/open/47768/0/03-FIEP-FacilitatorRequestForm.pdf

TAC §89.1050 The Admission, Review, and Dismissal (ARD) Committee.

(g) All members of the ARD committee must have the opportunity to participate in a collaborative manner in developing the IEP. A decision of the ARD committee concerning required elements of the IEP must be made by mutual agreement 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 who disagrees must be offered a single opportunity to recess and reconvene the ARD committee meeting. The period of time for reconvening the ARD committee meeting must not exceed ten school days, unless the parties mutually agree otherwise. The ARD committee must schedule the reconvened meeting at a mutually agreed upon time and place. The opportunity to recess and reconvene is not required when the student's presence on the campus presents a danger of physical harm to the student or others or when the student has committed an expellable offense or an offense that [which] may lead to a placement in a disciplinary alternative education program. The requirements of this subsection do not prohibit the ARD committee from recessing an ARD committee meeting for reasons other than the failure to reach mutual agreement about all required elements of an IEP.

If the parent brings an attorney to the ARD meeting without prior notice to the school district, the Administrator must recess the ARD until such time as the school's attorney can also attend. It is critical that the district document the student services that will continue until the ARD is reconvened. During the recess involve the Special Education Director or Coordinator to consider alternative resolutions to propose to the parent other than involvement of attorneys.

(2) During the recess, the ARD committee members must consider alternatives, gather additional data, prepare further documentation, and/or obtain additional resource persons who may assist in enabling the ARD committee to reach mutual agreement. *Determine if training staff in facilitation is needed in order to reach mutual agreement. The administrator working with the staff will analyze all possible options, pros/cons and prepare to present the data.*

a) It is important to help the group of people understand their common objectives are to benefit and assist the student.

b) Beginning with assessment/evaluation at the beginning of the IEP, present IEP areas in small segments and determine agreement at each step. Listen and keep the focus on the student!

c) In areas of disagreement, determine if agreement can be reached for a trial period of even a short segment of time such as 6 weeks or 2-3 months then return to a review IEP meeting.

d) In decision making consider at all times the student needs.

(3) If a recess is implemented as provided in paragraph (1) of this subsection and the ARD committee still cannot reach mutual agreement, the school district must implement the IEP that it has determined to be appropriate for the student.

(4) When mutual agreement is not reached, a written statement of the basis for the disagreement must be included in the IEP. The parent who disagrees must be offered the opportunity to write his or her own statement of disagreement.

If the parent disagrees with any part of the IEP, the parent must be offered the opportunity to write their disagreement in the IEP. If the parent refuses to write their disagreement, the school district personnel must write in the IEP specifics of the parental disagreement to the best of their understanding.

(h) Whenever a school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of a free appropriate public education to the student, the school district must provide prior written notice as required in 34 CFR, §300.503, including providing the notice in the parent's native language or other mode of communication. This notice must be provided to the parent at least five school days before the school district proposes or refuses the action unless the parent agrees to a shorter timeframe.

For requirements on Complaints, Notices and Consents see Section 7. Procedural Safeguards.

Parent Resource: http://www.partnerstx.org/

X. TRANSFERS / NEW TO DISTRICT

§300.304 Evaluation procedures.
(c) Other evaluation procedures.
(5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same academic year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with §300.301 (d)(2) and (e), to ensure prompt completion of full evaluations. *§300.301 (d)(2) and (e) found in FIE section.*

§300.323 When IEPs must be in effect.
(a) General. At the beginning of each school year, the WCSESSA must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in §300.320.
(b) Preschool (PPCD);
(c) Timeline; (d) Teacher Accessibility and Input; *(all found in this section 4 of this document)*
(e) IEPs for children who transfer public agencies in the same state.
If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either---
(1) Adopts the child's IEP from the previous public agency; or
(2) Develops, adopts, and implements a new IEP that meets the applicable requirements in §§300.320 through 300.324.
(f) IEPs for children who transfer from another State. If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency--
(1) Conducts an evaluation pursuant to §§300.304 through 300.306 (if determined to be necessary by the new public agency); and
(2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in §§300.320 through 300.324.
(g) Transmittal of records. To facilitate the transition for a child described in paragraphs (e) and (f) of this section –
(1) The new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, pursuant to 34 CFR 99.31(a)(2); and
(2) The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency. *For all of 34 CFR 99.31 FERPA see: http://www2.ed.gov/policy/gen/reg/ferpa/index.html*

TEC §25.007. Transferring Students (records)
(b) In recognition of the challenges faced by students in substitute care, the agency shall assist the transition of substitute students from one school to another by:
(1) ensuring that school records for a student in substitute care are transferred to the student's new school not later than the 10th working day after the date the student begins enrollment at the school;
(2) developing systems to ease transition of a student in substitute care during the first two weeks of enrollment at a new school;
(3) .... (see Section 7. Procedural Safeguards for additional information)

TAC §89.1050 The Admission, Review, and Dismissal (ARD) Committee.
(j) A school district must comply with the following for a student who is newly enrolled in the school district.
(1) When a student transfers to a new school district within the state in the same school year 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 new school district must meet the requirements of 34 CFR, §300.323(e), regarding the provision of special education services. The timeline for completing the requirements outlined in 34 CFR, §300.323(e)(1) or (2), is 30 school days from the date the student is verified as being a student eligible for special education services.

(2) When a student transfers from a school district in another state in the same school year 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 new school district must meet the requirements of 34 CFR, §300.323(f), regarding the provision of special education services. If the new school district determines that an evaluation is necessary, the evaluation is considered a full individual and initial evaluation and must be completed within the timelines established by §89.1011(c) and (e) of this title. The timeline for completing the requirements in 34 CFR, §300.323(f)(2), if appropriate, is 30 calendar days from the date of the completion of the evaluation report. If the school district determines that an evaluation is not necessary, the timeline for completing the requirements outlined in 34 CFR, §300.323(f)(2), is 30 school days from the date the student is verified as being a student eligible for special education services.

(3) In accordance with TEC, §25.002, and 34 CFR, §300.323(g), the school district in which the student was previously enrolled must furnish the new school district with a copy of the student's records, including the student's special education records, not later than the 10th working day after the date a request for the information is received by the previous school district.

For all of 34 CFR 99.31 FERPA see: http://www2.ed.gov/policy/gen/reg/ferpa/index.html

TEC §25.002 requires the previous LEA to transmit the student's current IEP through the Texas Records Exchange (TREx) system within 10 working days from receiving the request. The 30-day timeline referenced above in 19 TAC §89.1050(f)(4), applies to the rest of a student's eligibility record requested by a new LEA.

The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C., §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.

(FERPA)

For more information on TEC §25.002 Requirements for Enrollment in a Public School see: www.statutes.legis.state.tx.us/Docs/ED/htm/ED.25.htm#25.002

XI. PRIVATE NONPUBLIC SCHOOL PROVISIONS *(see Section 5. Instructional Arrangements)*

§300.2 Applicability of this part to State and local agencies.
(c) Private schools and facilities. Each public agency in the State is responsible for ensuring that the rights and protections under Part B of the Act are given to children with disabilities--
(1) Referred to or placed in private schools and facilities by the WCSESSA; or
(2) Placed in private schools by their parents under the provisions of §300.148

§300.118 Children in public or private institutions.
Except as provided in §300.149(d) (regarding agency responsibility for general supervision for some individuals in adult prisons), an SEA must ensure that §300.114 is effectively implemented, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures). (Authority: 20 U.S.C. 1412(a)(5)) *(§300.114 is LRE)*

A. Placed by the District

§300.325 Private school placements by public agencies.
(a) Developing IEPs .
(1) Before the WCSESSA places a child with a disability in, or refers a child to, a private school or facility, the WCSESSA must initiate and conduct a meeting to develop an IEP for the child in accordance with §§300.320 and 300.324 *(§300.320 is Definition of IEP and §300.324 is Development of IEP)*
(2) The WCSESSA must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the WCSESSA must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.
(b) Reviewing and revising IEPs .
(1) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the WCSESSA.
(2) If the private school or facility initiates and conducts these meetings, the WCSESSA must ensure that the parents and an agency representative--
(i) Are involved in any decision about the child's IEP; and
(ii) Agree to any proposed changes in the IEP before those changes are implemented.
(c) Responsibility. Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the WCSESSA and the SEA. (Authority: 20 U.S.C. 1412(a)(10)(B))

B. Placed by the Parent

§300.37 Services plan. Services plan means a written statement that describes the special education and related services the WCSESSA will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with §300.132, and is developed and implemented in accordance with §§300.137 through 300.139. (Authority: 20 U.S.C. 1412(a)(10)(A))

§89.1075. General Program Requirements and Local District Procedures.
(g) School districts that contract for services from non-public day schools must do so in accordance with 34 Code of Federal Regulations, §300.147, and procedures developed by the TEA.

TAC §89.1096. Provision of Services for Students Placed by their Parents in Private Schools or Facilities.
(a) Except as specifically provided in this section, in accordance with 34 Code of Federal Regulations (CFR), §300.137, no eligible student who has been placed by his or her parent(s) in a private school or facility has an individual right to receive some or all of the special education and related services that the student would receive if he or she were enrolled in a public school district. Except as specifically set forth in this section, a

school district's obligations with respect to students placed by their parents in private schools are governed by 34 CFR, §§300.130-300.144.

(1) For purposes of subsections (a) and (d) of this section only, private school is defined as a private elementary or secondary school, including any pre-school, religious school, and institutional day or residential school, that:

(A) as required by 34 CFR, §300.13 and §300.130, is a nonprofit entity that meets the definition of nonprofit in 34 CFR, §77.1; and

(B) provides elementary or secondary education that incorporates an adopted curriculum designed to meet basic educational goals, including scope and sequence of courses, and formal review and documentation of student progress.

(2) A home school must meet the requirements of paragraph (1)(B) of this subsection, but not paragraph (1)(A) of this subsection, to be considered a private school for purposes of subsections (a) and (d) of this section.

(b) When a student with a disability who has been placed by his or her parents directly in a private school or facility is referred to the local school district, the local district shall convene an admission, review, and dismissal (ARD) committee meeting to determine whether the district can offer the student a free appropriate public education (FAPE). If the district determines that it can offer a FAPE to the student, the district is not responsible for providing educational services to the student, except as provided in 34 CFR, §§300.130-300.144, or subsection (e) of this section, until such time as the parents choose to enroll the student in public school full time.

(c) Parents of an eligible student ages 3 or 4 shall 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 or until the student is eligible to attend a district's public school kindergarten program, whichever comes first, subject to paragraphs (1)-(3) of this subsection. The public school district where a student resides is responsible for providing special education and related services to a student whose parents choose dual enrollment.

(1) The student's ARD committee shall develop an individualized education program (IEP) designed to provide the student with a FAPE in the least restrictive environment appropriate for the student.

(2) From the IEP, the parent and the district shall 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, §§300.114-300.120, and the policies and procedures of the district.

(3) For students served under the provisions of this subsection, the school district (WCSESSA) shall 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 shall be consistent with those provided for students enrolled only in the public school and shall remain the property of the school district.

(d) Parents of an eligible student ages 3 or 4 who decline dual enrollment for their student may request a services plan as described in 34 CFR, §§300.130-300.144. The public school district where the private school is located is responsible for the development of a services plan, if the student is designated to receive services under 34 CFR, §300.132.

(e) The school district shall 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.

(f) Complaints regarding the implementation of the components of the student's IEP that have been selected by the parent and the district under subsection (c) of this section may be filed with the Texas Education Agency under the procedures in 34 CFR, §§300.151-300.153. Additionally, parents may request mediation as outlined in 34 CFR, §300.506. The procedures in 34 CFR, §§300.300, 300.504, 300.507, 300.508, and 300.510-300.518 (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 the district under subsection (c).

For the TEA "Guidance on Parentally-Placed Private School Children with Disabilities" and "Frequently Asked Questions Proportionate Share/State Guidance on 89.1096 Private Schools," please see the website: http://tea.texas.gov/Academics/Special_Student_Populations/Special_Education/Programs_and_Services/State_Guidance/Guidance_on_Parentally_Placed_Private_School_Children_with_Disabilities/

XII. RESIDENTIAL PLACEMENTS *(see also Section 5 Instructional Arrangements and Section 8 for Residential Facilities MOU))*

§300.104 Residential placement.
If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child. (Authority: 20 U.S.C. 1412(a)(1), 1412(a)(10)(B))

See TEA website for PowerPoint on Residential Facilities if needed.
http://tea.texas.gov/pmi/SPEDRFmonitoring/

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Section 4b. ADDITIONAL IEP INFORMATION

I. SPECIFIC AREAS TO ADDRESS IN THE ARD / IEP MEETING

A. Adapted Physical Education (APE)

§300.108 Physical education.
The TEA must ensure that public agencies in the State comply with the following:
(a) General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the WCSESSA enrolls children without disabilities and does not provide PE to children without disabilities in the same grades.
(b) Regular physical education. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless--
(1) The child is enrolled full time in a separate facility; or
(2) The child needs specially designed physical education, as prescribed in the child's IEP.
(c) Special physical education. If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs.
(d) Education in separate facilities. The public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this section. (Authority: 20 U.S.C. 1412(a)(5)(A))
http://www.tahperd.org/web/Online/About_us/Adapted_Physical_Education.aspx

1. All students referred for adapted physical education evaluation must have an identified disability.
A. The request for an adapted physical education first requires an evaluation be conducted. The evaluation request may have come from the RtI Committee upon initial referral or by the student's ARD/IEP committee.
B. APE is provided upon consideration of a current evaluation and written report.
2. If APE is provided, the goals and objectives will be approved by the ARD/IEP Committee.
3. Parents will receive progress reports toward the APE goals/objectives in the same timeframe as nondisabled students.

B. Assistive Technology

§300.5 Assistive technology device. 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 child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of that device. (Authority: 20 U.S.C. 1401(1))

§300.6 Assistive technology service. Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes-
(a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and
(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are

otherwise substantially involved in the major life functions of that child. (Authority: 20 U.S.C. 1401(2))

§300.105 Assistive technology; proper functioning of hearing aids.
(a) Each public agency must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §§300.5 and 300.6, respectively, are made available to a child with a disability if required as a part of the child's--
(1) Special education under §300.39;
(2) Related services under §300.34; or
(3) Supplementary aids and services under §§300.42 and 300.114(a)(2)(ii).
(b) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive FAPE.

§300.324 Development, review, and revision of IEP
(a) (2) Consideration of special factors. The IEP Team must--
(v) Consider whether the child needs assistive technology devices and services.

Student use in a school setting of any assistive technology, including but not limited to 2 way listening/talking devices, GPS locators, etc., must be discussed at the IEP meeting. All variables to the use of such devices will be considered. Federal information privacy laws require consideration of other student's rights before any auditory device may be used in a school setting.

Click link to review the Assistive Technology Region 4 ESC Leadership Function/Project which TEA supports.
http://www.texasat.net/

The decentralized function of TEA for assistive technology is assigned to Region 4 ESC. They provide statewide leadership through the Texas Assistive Technology Network (TATN). Online training modules are provided in a variety of areas including evaluation, reading, writing, etc.

C. Auditory Impairment

§300.324 Development, review, and revision of IEP
(a) (2) Consideration of special factors . The IEP Team must--
(iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and
(v) Consider whether the child needs assistive technology devices and services.
Opportunities for direct communications with peers and professional personnel in the child's language and communication mode will be specifically addressed in the ARD/IEP Committee meeting.

TAC §89.1050 The Admission, Review, and Dismissal (ARD) Committee.
(b) For a student from birth through two years of age with visual and/or auditory impairments, an individualized family services plan (IFSP) meeting must be held in place of an ARD committee meeting in accordance with 34 CFR, §§300.320-300.324, and the memorandum of understanding between the Texas Education Agency and the Department of Assistive and Rehabilitative Services. For students three years of age and older, school districts must develop an IEP.

TEC §29.301. Definitions. In this subchapter:
(1) "Admission, review, and dismissal committee" means the committee required by State Board of Education rules to develop the individualized education program required by the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.) for any student needing special education.
(2) "American Sign Language" means a complete, visual, and manual language with its own grammar and syntax.
(3) "English" includes writing, reading, speech, speech reading, cued speech, and any English-based manual-visual method of communication.

(4) "Unique communication mode" or "appropriate language mode" includes English and American Sign Language.

TEC § 29.302. Findings.

(a) The legislature finds that it is essential for the well-being and growth of students who are deaf or hard of hearing that educational programs recognize the unique nature of deafness and the hard-of-hearing condition and ensure that all students who are deaf or hard of hearing have appropriate, ongoing, and fully accessible educational opportunities. Students who are deaf or hard of hearing may choose to use a variety of language modes and languages, including oral and manual-visual language. Students who are deaf may choose to communicate through the language of the deaf community, American Sign Language, or through any of a number of English-based manual-visual languages. Students who are hard of hearing may choose to use spoken and written English, including speech reading or lip reading, together with amplification instruments, such as hearing aids, cochlear implants, or assistive listening systems, to communicate with the hearing population. Students who are deaf or hard of hearing may choose to use a combination of oral or manual-visual language systems, including cued speech, manual signed systems, and American Sign Language, or may rely exclusively on the oral-aural language of their choice. Students who are deaf or hard of hearing also may use other technologies to enhance language learning.

(b) The legislature recognizes that students who are deaf or hard of hearing should have the opportunity to develop proficiency in English, including oral or manual-visual methods of communication, and American Sign Language.

TEC §29.303. Unique Communication. Students who are deaf or hard of hearing must have an education in which their unique communication mode is respected, used, and developed to an appropriate level of proficiency. Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

TEC §29.305. Language Mode Peers.

If practicable and not in conflict with any admission, review, and dismissal committee recommendations, a student who is deaf or hard of hearing must have an education in the company of a sufficient number of peers using the same language mode and with whom the student can communicate directly. If practicable, the peers must be of the same or approximately the same age and ability. Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

TEC §29.306. Familial and Advocate Involvement. A student who is deaf or hard of hearing must have an education in which the student's parents or legal guardians and advocates for the student's parents or legal guardians are involved in determining the extent, content, and purpose of programs. Other individuals, including individuals who are deaf or hard of hearing, may be involved at the discretion of parents or legal guardians or the WCSESSA.

TEC §29.307. Role Models. A student who is deaf or hard of hearing shall be given the opportunity to be exposed to deaf or hard-of-hearing role models.

TEC §29.308. Regional Programs. Regional programs for students who are deaf or hard of hearing shall meet the unique communication needs of students who can benefit from those programs. Appropriate funding for those programs shall be consistent with federal and state law, and money appropriated to school districts for educational programs and services for students who are deaf or hard of hearing may not be allocated or used for any other program or service.

TEC §29.310. Procedures and Materials for Assessment and Placement

(a) Procedures and materials for assessment and placement of students who are deaf or hard of hearing shall be selected and administered so as not to be racially, culturally, or sexually discriminatory.

(b) A single assessment instrument may not be the sole criterion for determining the placement of a student.

(c) The procedures and materials for the assessment and placement of a student who is deaf or hard of hearing shall be in the student's preferred mode of communication. All other procedures and materials used with any student who is deaf or hard of hearing and who has limited English proficiency shall be in the student's preferred mode of communication.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

TEC §29.311. Educational Programs.

(a) Educational programs for students who are deaf or hard of hearing must be coordinated with other public and private agencies, including:
(1) agencies operating early childhood intervention programs;
(2) preschools;
(3) agencies operating child development programs;
(4) nonpublic, nonsectarian schools;
(5) agencies operating regional occupational centers and programs; and
(6) the Texas School for the Deaf.
(b) As appropriate, the programs must also be coordinated with postsecondary and adult programs for persons who are deaf or hard of hearing.

TEC §29.312. Psychological Counseling Services. Appropriate psychological counseling services for a student who is deaf or hard of hearing shall be made available at the student's school site in the student's primary mode of communication. In the case of a student who is hard of hearing, appropriate auditory systems to enhance oral communication shall be used if required by the student's admission, review, and dismissal committee.

TEC §29.313. Evaluation of Programs. Each school district must provide continuous evaluation of the effectiveness of programs of the district for students who are deaf or hard of hearing. If practicable, evaluations shall follow program excellence indicators established by the TEA. Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

TEC §29.314. Transition into Regular Class.
In addition to satisfying requirements of the admission, review, and dismissal committee and to satisfying requirements under state and federal law for vocational training, the WCSESSA shall develop and implement a transition plan for the transition of a student who is deaf or hard of hearing into a regular class program if the student is to be transferred from a special class or center or nonpublic, nonsectarian school into a regular class in a public school for any part of the school day. The transition plan must provide for activities:
(1) to integrate the student into the regular education program and specify the nature of each activity and the time spent on the activity each day; and
(2) to support the transition of the student from the special education program into the regular education program. Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

TEC §38.033. SCHOOL HEALTH AND RELATED SERVICES PROGRAM; ELIGIBILITY FOR AUDIOLOGY SERVICES..
(a) A child is eligible to receive audiology services provided under the school health and related services program if the child:
(1) is 20 years of age or younger;
(2) has a disability or chronic medical condition;
(3) is eligible for Medicaid benefits; and
(4) has been prescribed the services under:
(A) an individualized education program created under the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.); or
(B) a plan created under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794).
(b) The Health and Human Services Commission shall provide reimbursement to a provider under the school health and related services program for audiology services provided to a child who is eligible for the services under Subsection (a).
(c) The executive commissioner of the Health and Human Services Commission, in consultation with the agency, shall adopt rules necessary to implement this section.
SECTION 2. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

TEC §29.316 LANGUAGE ACQUISITION..
(a) In this section:
(1) "Center" means the Educational Resource Center on Deafness at the Texas School for the Deaf.
(2) "Division" means the Division for Early Childhood Intervention Services of the Health and Human Services Commission.

(3) "Language acquisition" includes expressive and receptive language acquisition and literacy development in English, American Sign Language, or both, or, if applicable, in another language primarily used by a child's parent or guardian, and is separate from any modality used to communicate in the applicable language or languages.

(b) The commissioner and the executive commissioner of the Health and Human Services Commission jointly shall ensure that the language acquisition of each child eight years of age or younger who is deaf or hard of hearing is regularly assessed using a tool or assessment determined to be valid and reliable as provided by Subsection (d).

(c) Not later than August 31 of each year, the agency, the division, and the center jointly shall prepare and post on the agency's, the division's, and the center's respective Internet websites a report on the language acquisition of children eight years of age or younger who are deaf or hard of hearing. The report must:

(1) include:

(A) existing data reported in compliance with federal law regarding children with disabilities; and

(B) information relating to the language acquisition of children who are deaf or hard of hearing and also have other disabilities;

(2) state for each child:

(A) the instructional arrangement used with the child, as described by Section 42.151, including the time the child spends in a mainstream instructional arrangement;

(B) the specific language acquisition services provided to the child, including:

(i) the time spent providing those services; and

(ii) a description of any hearing amplification used in the delivery of those services, including:

(a) the type of hearing amplification used;

(b) the period of time in which the child has had access to the hearing amplification; and

(c) the average amount of time the child uses the hearing amplification each day;

(C) the tools or assessments used to assess the child's language acquisition and the results obtained;

(D) the preferred unique communication mode used by the child at home; and

(E) the child's age, race, and gender, the age at which the child was identified as being deaf or hard of hearing, and any other relevant demographic information the commissioner determines to likely be correlated with or have an impact on the child's language acquisition;

(3) compare progress in English literacy made by children who are deaf or hard of hearing to progress in that subject made by children of the same age who are not deaf or hard of hearing, by appropriate age range; and

(4) be redacted as necessary to comply with state and federal law regarding the confidentiality of student medical or educational information.

(d) The commissioner, the executive commissioner of the Health and Human Services Commission, and the center shall enter into a memorandum of understanding regarding:

(1) the identification of experts in deaf education; and

(2) the determination, in consultation with those experts, of the tools and assessments that are valid and reliable, in both content and administration, for use in assessing the language acquisition of children eight years of age or younger who are deaf or hard of hearing.

(e) The agency shall use existing collected data and data collected and transferred from the Department of State Health Services and the Health and Human Services Commission, as agreed upon in the memorandum of understanding, for the report under this section.

(f) The commissioner and the executive commissioner of the Health and Human Services Commission jointly shall adopt rules as necessary to implement this section, including rules for:

(1) assigning each child eight years of age or younger who is deaf or hard of hearing a unique identification number for purposes of the report required under Subsection (c) and to enable the tracking of the child's language acquisition, and factors affecting the child's language acquisition, over time; and

(2) implementing this section in a manner that complies with federal law regarding confidentiality of student medical or educational information, including the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.) and the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), and any state law relating to the privacy of student information.

SECTION 3.

(b) Not later than December 1, 2019, the commissioner of education, the executive commissioner of the Health and Human Services Commission, and the center jointly shall determine the tools and assessments that are valid and reliable for use in assessing the language acquisition of children eight years of age or younger who are deaf or hard of hearing as required under Section 29.316(d), Education Code, as added by this Act.

SECTION 4. The Texas Education Agency and the Health and Human Services Commission are required to implement Section 29.316, Education Code, as added by this Act, only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the agency and commission may, but are not required to, implement Section 29.316, Education Code, as added by this Act, using other appropriations available for the purpose.

SECTION 1. Section 392.002, Government Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) In addition to the terms and phrases listed in Subsection (a), the legislature and the Texas Legislative Council are directed to avoid using in any new statute or resolution "hearing impaired," "auditory impairment," and "speech impaired" in reference to a deaf or hard of hearing person, and the legislature and the Texas Legislative Council are directed to replace, when enacting or revising a statute or resolution, those phrases with "deaf" or "hard of hearing," as appropriate.

D. Autism

TAC §89.1055. Content of the Individualized Education Program (IEP).

(e) For students eligible under §89.1040(c)(1) of this title (relating to Eligibility Criteria), the strategies described in this subsection must be considered, based on peer-reviewed, research-based educational programming practices to the extent practicable and, when needed, addressed in the IEP:

(1) extended educational programming (for example: extended day and/or extended school year services that consider the duration of programs/settings based on assessment of behavior, social skills, communication, academics, and self-help skills);

(2) daily schedules reflecting minimal unstructured time and active engagement in learning activities (for example: lunch, snack, and recess periods that provide flexibility within routines; adapt to individual skill levels; and assist with schedule changes, such as changes involving substitute teachers and pep rallies);

(3) in-home and community-based training or viable alternatives that assist the student with acquisition of social/behavioral skills (for example: strategies that facilitate maintenance and generalization of such skills from home to school, school to home, home to community, and school to community);

(4) positive behavior support strategies based on relevant information, for example:

(A) antecedent manipulation, replacement behaviors, reinforcement strategies, and data-based decisions; and

(B) a behavioral intervention plan developed from a functional behavioral assessment that uses current data related to target behaviors and addresses behavioral programming across home, school, and community-based settings;

(5) beginning at any age, consistent with subsection (h) of this section, futures planning for integrated living, work, community, and educational environments that considers skills necessary to function in current and post-secondary environments;

(6) parent/family training and support, provided by qualified personnel with experience in Autism Spectrum Disorders (ASD), that, for example:

(A) provides a family with skills necessary for a student to succeed in the home/community setting;

(B) includes information regarding resources (for example: parent support groups, workshops, videos, conferences, and materials designed to increase parent knowledge of specific teaching/management techniques related to the student's curriculum); and

(C) facilitates parental carryover of in-home training (for example: strategies for behavior management and developing structured home environments and/or communication training so that parents are active participants in promoting the continuity of interventions across all settings);

(7) suitable staff-to-student ratio appropriate to identified activities and as needed to achieve social/behavioral progress based on the student's developmental and learning level (acquisition, fluency, maintenance, generalization) that encourages work towards individual independence as determined by, for example:

(A) adaptive behavior evaluation results;

(B) behavioral accommodation needs across settings; and

(C) transitions within the school day;

(8) communication interventions, including language forms and functions that enhance effective communication across settings (for example: augmentative, incidental, and naturalistic teaching);

(9) social skills supports and strategies based on social skills assessment/curriculum and provided across settings (for example: trained peer facilitators (e.g., circle of friends), video modeling, social stories, and role playing);

(10) professional educator/staff support (for example: training provided to personnel who work with the student to assure the correct implementation of techniques and strategies described in the IEP); and
(11) teaching strategies based on peer reviewed, research-based practices for students with ASD (for example: those associated with discrete-trial training, visual supports, applied behavior analysis, structured learning, augmentative communication, or social skills training).

(f) If the ARD committee determines that services are not needed in one or more of the areas specified in subsection (e) of this section, the IEP must include a statement to that effect and the basis upon which the determination was made.

Click link to review the Region 13 ESC Autism Statewide Leadership Function/Project which TEA supports.
http://www.txautism.net/evaluations
Additional resources available from the Texas Statewide Leadership for Autism Training:
http://www.txautism.net/index.html

Methodologies

Educational programming methodologies are not the responsibility of the ARD Committee. Appropriate instructional strategies and accommodations recommended by the ARD committee will be documented in the ARD. Special Education classroom teachers will have appropriate training. Students with autism may benefit from applied behavioral analysis methodologies which is a systematic approach to the assessment and evaluation of observable behavior, and the application of interventions that alter behavior. Data collection and analysis of progress is a key component in all special education classes in WCSESSA.

The following description of behavioral interventions/techniques is not an exhaustive one, but rather an overview of the most widespread techniques across the behavioral models.

Target Behaviors : All behavioral programs are based on the reinforcement of target behaviors. Therefore, the identification of reinforcers is one of the most important components of any applied behavioral analysis program. Slow progress and problem behavior are often caused by a failure to identify reinforcers and/or the small number of reinforcers delivered during a training session.

Positive Reinforcement : Positive reinforcement is one of the basic concepts underlying all applied behavioral analysis models. Positive reinforcement has been used to establish numerous behaviors in the area of self-care, language and communication, academic performance, vocational skills, as well as health, and safety.

Extinction : Extinction is the other basic concept underlying all behavioral analysis models. Extinction is defined as stopping the reinforcement (or escape) contingency for a previously reinforced response. Extinction results in a decrease in the frequency of the target response. Extinction is often combined with reinforcement. Then, it is called differential reinforcement —the reinforcement of a target response selected for acquisition and the extinction of another response.

Shaping and chaining : Shaping is a special type of differential reinforcement, which involves (a) successive instances of reinforcement of responses that more and more closely resemble the desired response and (b) extinction of responses that are further away from the terminal target response. Chaining consists of teaching a sequence of responses before the reinforcer is delivered. The desired behavior is broken down into small, teachable steps.

Prompting and fading: Prompts are techniques for establishing behaviors or bringing behaviors under the appropriate stimulus control. The prompt (a verbal, visual, or tactile stimulus) increases the probability of the correct response.

Discrete-Trial Training : DTT model advocates an intensive treatment (40 hours per week) that establishes skills in the context of a structured environment controlled by the teacher, with a large amount of trials, and with reinforcers that are not specific to the on-going activity.

Naturalistic Treatments : Natural Environment Training model or NET (without addressing the differences among these approaches). The common premise is that the target behaviors should be taught in the child's environment, in a conversational or play context, with interspersed trials, and reinforcers specific to the child's current interest.

TEC §25.087 Amended by HB 192, 2009, adds §25.087(b-3)

Summary : School districts are currently required to excuse certain temporary absences for appointments with health care professionals. New Subsection (b-3) specifies that such absences include the temporary absence of a student diagnosed with autism spectrum disorder for an appointment with a health care practitioner, as described

by §1355.015(b), Insurance Code, to receive a generally recognized service for persons with autism spectrum disorder, including applied behavioral analysis, speech therapy, and occupational therapy. The text of §1355.015(b), Insurance Code, is available at: *http://www.statutes.legis.state.tx.us/SOTWDocs/IN/word/IN.1355.doc*

The WCSESSA will request information from the parent in order to document the request for an excused absence does meet the requirements. The following must be documented:

a. what service specifically is the student receiving;
b. what are the credentials of the health care practitioner;
c. verification of attendance with the health care practitioner.

E. Deaf-Blindness *(See C. Auditory Impairment and Z. Visual Impairment - also for TSD/TSBVI see letter X.)*

F. Extended School Year Services (ESY)

§300.106 Extended school year services.
(a) General.
(1) The WCSESSA must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.
(2) Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with §§300.320 through 300.324, that the services are necessary for the provision of FAPE to the child. *(§§300.320 Definition of IEP, .321 IEP Team, .322 Parent Participation, .323 when IEPs must be in effect, .324 Development of IEP)*
(3) In implementing the requirements of this section, a public agency may not--
(i) Limit extended school year services to particular categories of disability; or
(ii) Unilaterally limit the type, amount, or duration of those services.
(b) Definition. As used in this section, the term extended school year services means special education and related services that--
(1) Are provided to a child with a disability--
(i) Beyond the normal school year of the WCSESSA;
(ii) In accordance with the child's IEP; and
(iii) At no cost to the parents of the child; and
(2) Meet the standards of the SEA.

TAC §89.1055. Content of the Individualized Education Program (IEP).
(c) If the ARD committee determines that the student is in need of extended school year (ESY) services, as described in §89.1065 of this title (relating to Extended School Year Services), then the IEP must identify which of the goals and objectives in the IEP will be addressed during ESY services.

TAC §89.1065. Extended School Year Services (ESY Services).
Extended school year (ESY) services are defined as individualized instructional programs beyond the regular school year for eligible students with disabilities.
(1) The need for ESY services must be determined on an individual student basis by the admission, review, and dismissal (ARD) committee in accordance with 34 Code of Federal Regulations (CFR), §300.106, and the provisions of this section. In determining the need for and in providing ESY services, the WCSESSA may not:
(A) limit ESY services to particular categories of disability; or
(B) unilaterally limit the type, amount, or duration of ESY services.
(2) The need for ESY services must be documented from formal and/or informal evaluations provided by the district or the parents. The documentation must demonstrate that in one or more critical areas addressed in the current individualized education program (IEP) goals and objectives, the student has exhibited, or reasonably may 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 in the absence of ESY services.
(3) The reasonable period of time for recoupment of acquired critical skills must be determined on the basis of needs identified in each student's IEP. If the loss of acquired critical skills would be particularly severe or substantial, or if such loss results, or reasonably may be expected to result, in immediate physical harm

to the student or to others, ESY services may be justified without consideration of the period of time for recoupment of such skills. In any case, the period of time for recoupment must not exceed eight weeks.

(4) A skill is critical when the loss of that skill results, or is reasonably expected to result, in any of the following occurrences during the first eight weeks of the next regular school year:
   (A) placement in a more restrictive instructional arrangement;
   (B) significant loss of acquired skills necessary for the student to appropriately progress in the general curriculum;
   (C) significant loss of self-sufficiency in self-help skill areas as evidenced by an increase in the number of direct service staff and/or amount of time required to provide special education or related services;
   (D) loss of access to community-based independent living skills instruction or an independent living environment provided by noneducational sources as a result of regression in skills; or
   (E) loss of access to on-the-job training or productive employment as a result of regression in skills.

(5) If the 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 pursuant to 34 CFR, §300.321.

(6) If a student for whom ESY services were considered and rejected loses critical skills because of the decision not to provide ESY services, and if those skills are not regained after the reasonable period of time for recoupment, the ARD committee must reconsider the current IEP if the student's loss of critical skills interferes with the implementation of the student's IEP.

(7) For students enrolling in a district during the school year, information obtained from the prior school district as well as information collected during the current year may be used to determine the need for ESY services.

(8) The provision of ESY services is limited to the educational needs of the student and must not supplant or limit the responsibility of other public agencies to continue to provide care and treatment services pursuant to policy or practice, even when those services are similar to, or the same as, the services addressed in the student's IEP. No student will be denied ESY services because the student receives care and treatment services under the auspices of other agencies.

(9) Districts are not eligible for reimbursement for ESY services provided to students for reasons other than those set forth in this section.

The following guidelines will be used to assist in identifying students who may need ESY services:

1. At the beginning of each school year, teachers will identify students who have experienced regression on specific IEP objectives by comparing the IEP reviews of the last six weeks of the previous school year with the student's mastery of those IEP objectives at the beginning of the school year, reteaching as necessary to recoup skills. This process applies to:
   a. students who did not receive ESY services, and
   b. students who did receive ESY services.

2. After the IEP review at the end of the first six weeks of the school year, teachers will document students who have not, even after reteaching during the first six weeks, recouped those objectives. This regression will be reviewed by the teacher to determine whether the regression is severe and/or substantial. In addition, follow #3 after two more weeks of reteach.

3. The teacher will conduct an additional IEP review for these objectives at the end of eight weeks, again documenting students who have not recouped objectives after the additional two weeks of reteaching. This information is very important to determine appropriate ESY services/IEP recommendations.

4. Throughout the school year, after holiday breaks, etc., keep documentation (student work, anecdotal records, charting, etc.) on any student experiencing regression on critical IEP skills that you will be recommending ESY services. Report information you feel pertinent to your supervisor.

5. The ARD/IEP committee will consider the need for ESY services for:
   a. students who appear to have experienced severe and/or substantial regression - recoupment problems during this data gathering,
   b. other students referred by school personnel on an individual basis for consideration for ESY services, and
   c. students referred by parents or guardians for ESY services consideration.

6. The ARD/IEP committee will determine the appropriate IEP goals and objectives from the current IEP and amount of services needed to prevent severe/substantial regression.

7. The IEPs of students receiving ESY services will be reviewed at the beginning of the fall term to determine whether ESY services provided were appropriate to prevent regression, or if progress was made. (Follow steps 1 - 5 above)

8. For students who transfer into the WCSESSA in the spring semester and data is not provided, attempts will be made to contact the student's teacher from the sending district to obtain documentation of regression. The FIE

will be one source of data and the student's teacher will begin documentation. An IEP meeting will be convened if ESY should need to be discussed. For ECI students new to the district, the staff will use all existing data to analyze regression recoupment of the goals and objectives on the IEP or the IFSP.

Additional ESY Considerations

For some students regression might be considered substantial even though recoupment does occur within the six to eight weeks (includes the 2 weeks of additional reteach). This is particularly true in critical skill areas such as health and safety. This must be an educational decision by the ARD/IEP committee, based on knowledge of the individual student's needs and current IEP goals and objectives.

1. *ESY services are not automatic year after year. The need must be determined each year by the ARD/IEP committee.*
2. *ESY services to be provided will be determined by the ARD/IEP committee for the individual student. Summer school is not synonymous with ESY services.*
3. *Services are not to be provided simply for recreational reasons or because the student would benefit from them or gain new skills.*
4. *The issue is whether the benefits accrued to the student during the school year on critical goals and objectives will be significantly jeopardized if the student is not provided an educational program during the summer months.*
5. *Typically ESY services are provided during the summer months. However, it could be provided at other times, such as before and after regular school hours or during school vacations, if the IEP team determines that the student requires ESY during those time periods in order to receive FAPE.*
6. *The considerations for ESY services include not only retrospective data, such as past regression and rate of recoupment, but also should include predictive data, based on the opinion of professionals in consultation with the child's parents as well as circumstantial considerations of the child's individual situation at home and in his or her neighborhood and community.*

Also see TEA website:
http://tea.texas.gov/Curriculum_and_Instructional_Programs/Special_Education/Programs_and_Services/Extended_School_Year_Services_for_Students_with_Disabilities/

TAC §89.1011(d). Full Individual and Initial Evaluation. The admission, review, and dismissal (ARD) committee must make its decisions regarding a student's initial eligibility determination and, if appropriate, individualized education program (IEP) and placement within 30 calendar days from the date of the completion of the written full individual and initial evaluation report. If the 30th day falls during the summer and school is not in session, the student's ARD committee has until the first day of classes in the fall to finalize decisions concerning the student's initial eligibility determination, IEP, and placement, unless the full individual and initial evaluation indicates that the student will need extended school year services during that summer.

G. Extracurricular Activities

§300.107 Nonacademic services.
The State must ensure the following:

(a) Each public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.
(Authority: 20 U.S.C. 1412(a)(1))

§300.117 Nonacademic settings.
In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in §300.107, each public agency

must ensure that each child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of that child. The WCSESSA must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings. (Authority: 20 U.S.C. 1412(a)(5))

§300.320 Definition of individualized education program.

(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include--

(4) A statement of the 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, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child--

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;

TEC § 33.081. Extracurricular Activities.

(e) Suspension of a student with a disability that significantly interferes with the student's ability to meet regular academic standards must be based on the student's failure to meet the requirements of the student's individualized education program. The determination of whether a disability significantly interferes with a student's ability to meet regular academic standards must be made by the student's admission, review, and dismissal committee. For purposes of this subsection, "student with a disability" means a student who is eligible for a district's special education program under Section 29.003(b).

(f) A student suspended under this section may practice or rehearse with other students for an extracurricular activity but may not participate in a competition or other public performance.

H. FBA (Functional Behavior Assessment) / BIP (Behavior Intervention Plan)

(see also Section 2-FIE and Section 6-Discipline)

§300.324 Development, review, and revision of IEP

(a) (2) Consideration of special factors. The IEP Team must--

(i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

TAC §89.1050 The Admission, Review, and Dismissal (ARD) Committee.

(k) ~~(j)~~ All disciplinary actions regarding students with disabilities must be determined in accordance with 34 CFR, §§300.101(a) and 300.530-300.536 (relating to disciplinary actions and procedures), the TEC, Chapter 37, Subchapter A (Alternative Settings for Behavior Management), and §89.1053 of this title (relating to Procedures for Use of Restraint and Time-Out).

TEC §29.005 (SB 914)

(g) The committee may determine that a behavior improvement plan or a behavioral intervention plan is appropriate for a student for whom the committee has developed an individualized education program. If the committee makes that determination, the behavior improvement plan or the behavioral intervention plan shall be included as part of the student's individualized education program and provided to each teacher with responsibility for educating the student.

This Act applies beginning with the 2013-2014 school year.

TAC §89.1055 Content of the IEP

(g) If the ARD committee determines that a behavior improvement plan or a behavioral intervention plan is appropriate for a student, that plan must be included as part of the student's IEP and provided to each teacher with responsibility for educating the student.

Addressing the continuum of behavioral needs: Student special education needs will be addressed in the Least Restrictive Environment appropriate for each individual as determined by the ARD/IEP Committee. Social/Emotional Goals/Objectives would be a consideration. If the student exhibits behavior that is interfering with learning or the learning of others, the ARD/IEP Committee will consider completing a Functional Behavior Assessment (FBA) and develop a Behavioral Intervention Plan (BIP) if needed. In addition, Social/Emotional Goals/Objectives would be appropriate. For more information see Section 2-FIE for development of the FBA and also Section 6 of this document for more information on Discipline.

Click link to review the Region 4 ESC Behavior Support Initiative Statewide Function which TEA supports.
http://www.txbehaviorsupport.org/

I. Grading and Reporting

TEC §28.0214. Finality of Grade.

(a) An examination or course grade issued by a classroom teacher is final and may not be changed unless the grade is arbitrary, erroneous, or not consistent with the WCSESSA grading policy applicable to the grade, as determined by the board of trustees of the school district in which the teacher is employed.

(b) A determination by a school district board of trustees under Subsection (a) is not subject to appeal. This subsection does not prohibit an appeal related to a student's eligibility to participate in extracurricular activities under Section 33.081.

§300.320 Definition of individualized education program.

(a) (3) A description of--

(i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and

(ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

TEC §28.0216 - District Grading Policy

Requires that school districts adopt a grading policy before the start of each school year. The school district policy:

(1) must require a classroom teacher to assign a grade that reflects the student's relative mastery of an assignment;

(2) may not require a classroom teacher to assign a minimum grade for an assignment without regard for the student's quality of work; and

(3) may allow a student a reasonable opportunity to make up or redo a class assignment or examination for which the student received a failing grade.

Each student receiving special education instruction has an individual education program (IEP) which addresses the student's educational needs, goals and objectives. The district grading policy will be followed and discussed during the ARD/IEP meeting.

1. The special education resource and self-contained teachers will utilize a lesson plan which reflects the TEKS based on the IEP and Standards Based Goals. Supporting documentation of student grades should be available.

2. Care should be taken to ensure that goals are challenging and based on student academic achievement and functional performance. The IEP may include accommodations in curriculum, methods, pacing and materials, as determined appropriate by the ARD committee.

3. If the student with disabilities fails to make progress on the IEP, the responsible teacher will review the IEP for appropriateness of goals/objectives, instructional materials and methods. The teacher must document the efforts made to try to help the student achieve success.

a. If a student with disabilities is not be progressing toward mastery of the goal by the annual ARD, the ARD/IEP committee must convene to discuss the student's needs and make recommendations to assist the student.

b. An ARD/IEP committee will meet if the student is not attending school to discuss the appropriateness of the IEP, need for additional testing, and pursuit of compulsory attendance, if appropriate.

4. The grading of a special education student in a general education classroom is based upon the district grading policy and the ARD/IEP committee recommends accommodations of pacing, methods, and materials needed.

When accommodations have been recommended by the ARD/IEP committee, the special education teacher is responsible for:

a. informing the general education teacher of the recommended accommodations;
b. providing other information concerning the student's achievement and functioning levels, learning style and behavioral needs;
c. offering assistance to the general education teacher on a scheduled basis, as recommended by the ARD/IEP committee; and
d. documenting contacts with the general education teacher.

5. Unless the ARD/IEP committee designates otherwise,

a. when a special education student in general education classes is enrolled in the homebound program, the general classroom teacher will be responsible for grading all assignments and recording grades on the report card and permanent record for all subject areas.
b. report cards will be issued to PPCD children on the same schedule as non-disabled students on their assigned campus.

J. Intensive Remediation

TEC §28.0213. Intensive Program of Instruction.

(a) The WCSESSA shall offer an intensive program of instruction to a student who does not perform satisfactorily on an assessment instrument administered under Subchapter B, Chapter 39.

(b) The WCSESSA shall design the intensive program of instruction described by Subsection (a) to:

(1) enable the student to:

(A) to the extent practicable, perform at the student's grade level at the conclusion of the next regular school term; or

(B) attain a standard of annual growth specified by the school district and reported by the district to the TEA; and

(2) if applicable, carry out the purposes of Section 28.0211.

(c) The WCSESSA shall use funds appropriated by the legislature for an intensive program of instruction to plan and implement intensive instruction and other activities aimed at helping a student satisfy state and local high school graduation requirements. The commissioner shall distribute funds to districts that implement a program under this section based on the number of students identified by the district who:

(1) do not perform satisfactorily on an assessment instrument administered under Subchapter B, Chapter 39; or

(2) are not likely to receive a high school diploma before the fifth school year following the student's enrollment in grade nine, as determined by the district.

(d) A school district's determination of the appropriateness of a program for a student under this section is final and does not create a cause of action.

(e) For a student in a special education program under Subchapter A, Chapter 29, who does not perform satisfactorily on an assessment instrument administered under Section 39.023(a), (b), or (c), the student's admission, review, and dismissal committee shall design the program to:

(1) enable the student to attain a standard of annual growth on the basis of the student's individualized education program; and

(2) if applicable, carry out the purposes of Section 28.0211.

K. Length of School Day

TAC §89.1075. General Program Requirements and Local District Procedures.

(e) Students with disabilities must have available an instructional day commensurate with that of students without disabilities. The ARD committee must determine the appropriate instructional setting and length of day for each student, and these must be specified in the student's IEP.

Any variation in the length of school day will be thoroughly documented in the IEP and the specific plan for returning the student to a normal school day (the same as nondisabled peers) will be developed in the ARD meeting.

L. LEP (Limited English Proficient) – ELL (English ~~Language~~ Learners)

http://programs.esc20.net/default.aspx?name=lpac.framework

§300.324 Development, review, and revision of IEP

(a) (2) Consideration of special factors. The IEP Team must--

(ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;

TEC §101.1007. Assessment Provisions for Graduation.

(a) Although an English language learner (ELL) shall not be exempt from taking an end-of-course assessment for reasons associated with limited English proficiency or inadequate schooling outside the United States, special provisions under subsection (b) of this section shall apply to an ELL enrolled in an English I or II course or an English for Speakers of Other Languages (ESOL) I or II course if the ELL:
  (1) has been enrolled in U.S. schools for three school years or less or qualifies as an unschooled asylee or refugee enrolled in U.S. schools for five school years or less; and
  (2) the student has not yet demonstrated English language proficiency in reading as determined by the assessment under §101.1003 of this title (relating to English Language Proficiency Assessments).

(b) Concerning the applicable English I assessment in which the student is enrolled, an ELL who meets the eligibility criteria in subsection (a) of this section shall not be required to retake the assessment each time it is administered if the student passes the course but fails to achieve the passing standard on the assessment.

TEC §101.1005. Assessments of Achievement in Academic Content Areas and Courses.

(a) The language proficiency assessment committee (LPAC) shall select the appropriate assessment option for each English language learner (ELL) in accordance with this subchapter. For each ELL who receives special education services, the student's admission, review, and dismissal (ARD) committee in conjunction with the student's LPAC shall select the appropriate assessments. The LPAC shall document the decisions and justifications in the student's permanent record file, and the ARD committee shall document the decisions and justifications in the student's individualized education program. Assessment decisions shall be made on an individual student basis and in accordance with administrative procedures established by the Texas Education Agency (TEA).

(b) Except as provided by subsection (c) of this section an ELL shall participate in the Grades 3-8 and end-of-course assessments as required by the Texas Education Code (TEC), §39.023(c). Except as specified in paragraphs (1)-(3) of this subsection, an ELL shall be administered the general form of the English-version state assessment.
  (1) A Spanish-speaking ELL in Grades 3-5 may be administered the state's Spanish-version assessment if an assessment in Spanish will provide the most appropriate measure of the student's academic progress.
  (2) An ELL in Grade 3 or higher may be administered the linguistically accommodated English version of the state's mathematics, science, or social studies assessment if:
    (A) a Spanish-version assessment does not exist or is not the most appropriate measure of the student's academic progress;
    (B) the student has not yet demonstrated English language proficiency in reading as determined by the assessment under §101.1003 of this title (relating to English Language Proficiency Assessments); and
    (C) the student has been enrolled in U.S. schools for three school years or less or qualifies as an unschooled asylee or refugee enrolled in U.S. schools for five school years or less.
  (3) In certain cases, an ELL who receives special education services may, as a result of his or her particular disabling condition, qualify to be administered an alternative assessment instrument based on alternative achievement standards.

(c) In accordance with the TEC, §39.027(a-1), an unschooled asylee or refugee who meets the criteria of paragraphs (1)-(3) of this subsection shall be granted an exemption from an administration of an assessment instrument under the TEC, §39.023(a), (b), or (l). This exemption will only apply during the school year an unschooled asylee or refugee is first enrolled in a US public school. An unschooled asylee or refugee is a student who:
  (1) enrolled in a U.S. school as an asylee as defined by 45 Code of Federal Regulations §400.41 or a refugee as defined by 8 United States Code §1101;
  (2) has a Form I-94 Arrival/Departure record, or a successor document, issued by the United States Citizenship and Immigration Services that is stamped with "Asylee," "Refugee," or "Asylum"; and
  (3) as a result of inadequate schooling outside the United States, lacks the necessary foundation in the essential knowledge and skills of the curriculum prescribed under the TEC, §28.002, as determined by the LPAC.

(d) For purposes of LPAC determinations in subsection (c) of this section, inadequate schooling outside the United States is defined as little or no formal schooling outside the United States such that the asylee or

refugee lacked basic literacy in his or her primary language upon enrollment in school in the United States.

(e) The LPAC shall, in conjunction with the ARD committee if the ELL is receiving special education services under the TEC, Chapter 29, Subchapter A, determine and document any allowable testing accommodations for assessments under this section in accordance with administrative procedures established by the TEA.

(f) An ELL whose parent or guardian has declined the services required by the TEC, Chapter 29, Subchapter B, is not eligible for special assessment, accommodation, or accountability provisions made available to ELLs on the basis of limited English proficiency.

(g) School districts may administer the assessment of academic skills in Spanish to a student who is not identified as limited English proficient but who participates in a bilingual program if the LPAC determines the assessment in Spanish to be the most appropriate measure of the student's academic progress.

(h) Policies for including the academic performance of an ELL in state and federal accountability measures, which will take into account the second language acquisition developmental needs of this student population, shall be delineated in the official TEA publications required by Chapter 97 of this title (relating to Planning and Accountability).

TAC §89.1230. Eligible Students with Disabilities.

(a) School districts shall implement assessment procedures that differentiate between language proficiency and disabling ~~[handicapping]~~ conditions in accordance with Subchapter AA of this chapter (relating to Commissioner's Rules Concerning Special Education Services) and shall establish placement procedures that ensure that placement in a bilingual education or English as a second language program is not refused solely because the student has a disability.

(b) Language proficiency assessment ~~[Admission, review, and dismissal]~~ committee members shall meet in conjunction with admission, review, and dismissal ~~[language proficiency assessment]~~ committee members to review and provide recommendations with regard to the educational needs of each English ~~[language]~~ learner who qualifies for services in the special education program.

(See also Home Language Survey/LPAC in Sect. 1-Referral and in Sect. 2-FIE) To view all English language learner (ELL) resources, visit the ELL webpage, LPAC Resources, ARD and LPAC Collaboration.

TAC §89.1226 Testing and Classification of Students, Beginning with School Year 2019-2020

(l) For English learners who are also eligible for special education services, the standardized process for English learner program exit is followed in accordance with applicable provisions of subsection (i) of this section. However, annual meetings to review student progress and make recommendations for program exit must be made in all instances by the language proficiency assessment committee in conjunction with the ARD committee in accordance with §89.1230(b) of this title (relating to Eligible Students with Disabilities). Additionally, the language proficiency committee in conjunction with the ARD committee shall implement assessment procedures that differentiate between language proficiency and disabling conditions in accordance with §89.1230(a) of this title.

(m) For an English learner with significant cognitive disabilities, the language proficiency assessment committee in conjunction with the ARD committee may determine that the state's English language proficiency assessment for exit is not appropriate because of the nature of the student's disabling condition. In these cases, the language proficiency assessment committee in conjunction with the ARD committee may recommend that the student take the state's alternate English language proficiency assessment and shall determine an appropriate performance standard requirement for exit by language domain under subsection (i)(1) of this section;

For the full text, see http://ritter.tea.state.tx.us/rules/tac/chapter089/ch089bb.html

The Special Education Director or designee and the LPAC Coordinator will work closely together to ensure that campus staff has training and materials needed to make decisions in the ARDC. The LPAC and ARD will follow recommendations from the TEA website documents.

Provisions for ELLs Receiving Special Education Services. When an ELL receives special education services, the student's ARD committee is required to work in conjunction with the student's LPAC to ensure that issues related to both the student's particular disability and English language proficiency level are carefully considered when assessment decisions are made. If the student is not eligible for an exit level LEP postponement, the STAAR

requirements for the student are the same as for other students receiving special education services. LPACs must maintain documentation of all TEA student assessment and accommodation decisions in the student's permanent record file, and the ARD committee must document the information in the student's IEP.

Note that factors related to how much English the student knows (language proficiency in English) must not be used in determining the appropriateness of an assessment. The selection of the appropriate type of assessment is related to the student's disabling condition, not acquisition of English as a second language.
Decisions regarding exemptions of certain qualifying ELL students will be made following criteria from the regulations.
http://tea.texas.gov/student.assessment/ell/lpac/ or
http://programs.esc20.net/default.aspx?name=lpac.framework

Limited English Proficient (LEP) Students with Disabilities

For all LEP (Limited English Proficient) Students:

A. The LPAC report, must have been completed within the past year for each Annual ARD to review.
B. The ARD/IEP committee will determine placement based on current assessment and IEP Goals and Objectives needed.
C. The ARD/IEP committee will include the LPAC representative and will ensure that placement in a bilingual education or English as a second language program, if appropriate, is not refused solely because the student has a disability.

Additional LPAC guidance on TEA website will be followed: http://www.tea.state.tx.us/index2.aspx?id=2147496923 or http://www.tea.state.tx.us/student.assessment/ell/lpac/

To fulfill state requirements, the LPAC must:

- *Follow procedures in manual (suggest using form on TEA website to document LPAC meeting minutes: STAAR immigrant status, school year of enrollment in U.S., TELPAS reading rating, STAAR assessment decision.)*
- *monitor student progress and determine appropriate instructional interventions*
- *make decisions on individual student basis*
- *function as a committee*
- *document decisions, instructional interventions for exempted students, and reason for exemption in student's permanent record file*

Role of LPAC and ARD

The members of the ARD and the LPAC will pool expertise related to special education and second language acquisition to collaborate making assessment and accommodation decisions with an LPAC member participating in the ARD to:

- *evaluate student needs*
- *determine and implement testing requirements*
- *Supporting documentation must be kept in student's permanent record file (for LPAC) and student's IEP (for ARD committee).*

1. *Use the TEA manuals to assist with decision making.*
2. *Review carefully to be clear on how to fulfill special education and ELL assessment requirements for ELLs receiving special education services.*
3. *Decisions must be made on an individual basis.*
4. *The decision is indicated as "ARD Decision" in student's TELPAS record.*
5. *ELLs receiving special education services may be administered any assessment depending on whether they meet the participation requirements.*
   - *STAAR*
   - *STAAR Spanish*
   - *STAAR Alternate 2*
6. *Chapter 101 of the TAC requires the LPAC to work in conjunction with the ARD committee to make assessment decisions for these students.*
7. *This collaboration helps ensure that factors related to disabling conditions and second language acquisition are both carefully considered.*
8. *The LPAC's involvement in assessment decision-making for ELLs served by special education should help ensure that ELL participation in these assessments is appropriate.*

Accommodations for ELLs with Disabilities

For these students, LPACs will make accommodation decisions for the STAAR program in conjunction with the student's ARD committee, as applicable.

- *Linguistic accommodation decisions*
- *Accommodation decisions related to the student's disability*

These committees will refer to the accommodation information on the TEA Accommodation Resources webpage.

TELPAS (Texas English Language Proficiency Assessment System) is designed to assess the progress that limited English proficient (LEP) students make in learning the English language. Proficiency level descriptors (PLDs) descriptors define four stages of second language acquisition called English language proficiency levels. The four proficiency levels are beginning, intermediate, advanced, and advanced high. To view all English language learner (ELL) resources, visit the ELL webpage . http://www.tea.state.tx.us/student.assessment/ell/

M. LRE (Least Restrictive Environment - Placement)

§300.114 LRE requirements.

(a)General.

(1) Except as provided in §300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and §§300.115 through 300.120.

(2) Each public agency must ensure that--

(i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

(ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if 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.

(b)Additional requirement-State funding mechanism.

(1) General.

(i) A State funding mechanism must not result in placements that violate the requirements of paragraph (a) of this section ; and

(ii) A State must not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability FAPE according to the unique needs of the child, as described in the child's IEP.

(2) Assurance. If the State does not have policies and procedures to ensure compliance with paragraph (b)(1) of this section, the State must provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that the mechanism does not result in placements that violate that paragraph.

§300.115 Continuum of alternative placements. *(see also Section 5)*

(a) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

(b) The continuum required in paragraph (a) of this section must--

(1) Include the alternative placements listed in the definition of special education under §300.39 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and

(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

§300.116 Placements.

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that--

(a) The placement decision--

(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(2) Is made in conformity with the LRE provisions of this subpart, including §§300.114 through 300.118;

(b) The child's placement--
(1) Is determined at least annually;
(2) Is based on the child's IEP; and
(3) Is as close as possible to the child's home, unless the parent agrees otherwise;
(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;
(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and
(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. *(regular = public schools K-12 th)*
§300.117 Nonacademic settings; §300.118 Children in public or private institutions;
§300.119 Technical assistance and training – SEA

Click link to review the Region 20 ESC "Access General Curriculum (AGC)" Statewide Leadership Project which TEA supports. http://www.esc20.net/default.aspx?name=ci_se.agc.Home

WCSESSA will consider the general education classroom first when determining the least restrictive environment for a student receiving special education services. Whenever a student is removed from the general education setting, the ARD committee will discuss why the removal is in the best interest of the student.

The student will be educated in a school as close to the student's home school as possible, unless the services identified in the child's IEP require a different location. The WCSESSA makes available a full continuum of alternative placement options that maximize opportunities for students with disabilities to be educated with nondisabled peers to the maximum extent appropriate. If a student's IEP requires services that are not available at the school closest to the home, the student may be placed in another school that can offer the services that are included in the IEP and necessary for the student to receive FAPE. If needed to benefit from special education, transportation as a related service will be provided at no cost to the parent to the location where the IEP services will be provided.

§300.320 Definition of individualized education program.
(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include--
(1) A statement of the child's present levels of academic achievement and functional performance, including--
(i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

§300.110 Program options.
The State must ensure that each public agency takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education. (Authority: 20 U.S.C. 1412(a)(2), 1413(a)(1))

L.R.E. Questions the A.R.D. Committee may Discuss :
The following are points for discussion and documentation as an ARD/IEP committee determines the appropriateness of the Least Restrictive Environment for a student with disabilities. {based on Daniel R.R. v. State Board of Education, 874 F.2d 1036(5th Cir. 1989)}

1. Can education in the general classroom, with the use of supplementary aids and services be achieved satisfactorily for the student?
a. Has the WCSESSA taken steps to accommodate the student with disabilities in the general classroom?
(1) Did the district provide supplementary aids and services?
(2) Did the district provide accommodations?
b. Are the services provided sufficient?
(1) the district does not have to provide every conceivable supplementary aid or service.

(2) IDEA (Individuals with Disabilities Education Act) does not require general education teachers to devote all or most of their time to one student with a disability.
(3) IDEA does not require that general education teachers modify the general education program beyond recognition.
(4) General education teachers are not required to modify the general education curriculum to the extent that the student with disabilities is not required to learn any of the skills normally taught in general education.

c. Will the student receive an educational benefit from general education?
(1) Can the student grasp the TEKS curriculum elements of the general education curriculum?
(2) Consider and document the nature and severity of the student's disability in relation to receiving educational benefit from general education.

d. Examine the student's overall educational experience in the mainstreamed environment balancing the benefits of general and special education for each individual student.

e. What effect does the presence of the student with disabilities' have on the general classroom environment and thus on the education that the other students are receiving.
(1) Discuss and document any disruptions in the classroom.
(2) Does the student require so much of the teacher's attention that the teacher will have to ignore the other students' needs in order to attend the student with disabilities.

2. If education in a general classroom cannot be achieved satisfactorily, determine whether the student has been mainstreamed to the maximum extent appropriate for that student.

a. Determine if all academic and non-academic classes in general education with nondisabled peers has been considered or tried.

b. Determine if mainstreaming for lunch, recess, or other times has been considered.

Placement decisions are made on a case by case basis depending on each child's unique educational needs and circumstances, rather than by the child's category of disability, and must be based on the child's IEP. If a child has behavioral problems that are so disruptive in a regular classroom that the education of other children is significantly impaired the needs of the child with a disability generally cannot be met in that regular environment. However, before making that determination, the ARD must ensure that consideration has been given to the full range of supplementary aids and services that could be provided to the child in the regular educational environment to accommodate the unique needs of the child with a disability. Students with disabilities will have access to curriculum based on the TEKS in the least restrictive environment appropriate to meet their unique needs.

N. Physical Education

§300.108 Physical education.
The TEA must ensure that public agencies in the State comply with the following:

(a) General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the WCSESSA enrolls children without disabilities and does not provide PE to children without disabilities in the same grades.

(b) Regular physical education. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless--
(1) The child is enrolled full time in a separate facility; or
(2) The child needs specially designed physical education, as prescribed in the child's IEP.

(c) Special physical education. If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs.

(d) Education in separate facilities. The public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this section.
(Authority: 20 U.S.C. 1412(a)(5)(A))

State-wide Fitness Assessment: During the 80th Legislative Session, Senate Bill 530 was passed, which requires a statewide fitness assessment for all students in grades 3 to 12 starting in the 2007-2008 school year. The TEA identified FITNESSGRAM as the assessment tool to be used by all districts throughout the state. The law allows a school district to determine if a student is unable to participate. Most districts are following the IEP for students with disabilities to determine necessary exemptions.

TAC §103.1003, Student Physical Activity Requirements and Exemptions
TEC §28.002, Required Curriculum, as amended by Senate Bill 530, 80th Texas Legislature, 2007 (excerpts)

(d) The physical education curriculum required under Subsection (a)(2)(C) must be sequential, developmentally appropriate, and designed, implemented, and evaluated to enable students to develop the motor, self-management, and other skills, knowledge, attitudes, and confidence necessary to participate in physical activity throughout life. Each school district shall establish specific objectives and goals the district intends to accomplish through the physical education curriculum. In identifying the essential knowledge and skills of physical education, the State Board of Education shall ensure that the curriculum:
  (1) emphasizes the knowledge and skills capable of being used during a lifetime of regular physical activity;
  (2) is consistent with national physical education standards for:
    (A) the information that students should learn about physical activity; and
    (B) the physical activities that students should be able to perform;
  (3) requires that, on a weekly basis, at least 50 percent of the physical education class be used for actual student physical activity and that the activity be, to the extent practicable, at a moderate or vigorous level;
  (4) offers students an opportunity to choose among many types of physical activity in which to participate;
  (5) offers students both cooperative and competitive games;
  (6) meets the needs of students of all physical ability levels, including students who have a [disability,] chronic health problem, disability, including a student who is a person with a disability described under Section 29.003(b) or criteria developed by the agency in accordance with that section, or other special need that precludes the student from participating in regular physical education instruction but who might be able to participate in physical education that is suitably adapted and, if applicable, included in the student's individualized education program;
  (7) takes into account the effect that gender and cultural differences might have on the degree of student interest in physical activity or on the types of physical activity in which a student is interested;
  (8) teaches self-management and movement skills;
  (9) teaches cooperation, fair play, and responsible participation in physical activity;
  (10) promotes student participation in physical activity outside of school; and
  (11) allows physical education classes to be an enjoyable experience for students.

Section 2. This Act applies beginning with the 2015-2016 school year.

Exemptions for Students with Disabilities: Statutory References (28.002)(d)(6)
http://framework.esc18.net/display/Webforms/ESC18-FW-Citation.aspx?ID=4511

The Texas Education Code (TEC) permits an exemption for students with disabilities from participating in the physical fitness assessment, as indicated in the code below:

TEC §38.101. ASSESSMENT REQUIRED.

(a) Except as provided by Subsection (b), a school district annually shall assess the physical fitness of students enrolled in grades 3 through 12.
(b) A school district is not required to assess a student for whom, as a result of disability or other condition identified by commissioner rule, the assessment instrument adopted under Section 38.102 is inappropriate. http://www.statutes.legis.state.tx.us/SOTWDocs/ED/htm/ED.38.htm

A “student with a disability” may be able to participate like any other student or with modifications and/or adaptations. A student receiving special education services should not be restricted from participating in the assessment based solely on the student’s eligibility for special education services. Only students who meet the “restricted” definition as provided in the Texas Administrative Code (TAC) must be temporarily and/or permanently restricted from participation.

TAC §74.31. Health Classifications for Physical Education.
For physical education, a district must classify each student, on the basis of health, into one of the following categories.
(1) Unrestricted (not limited in activities).
(2) Restricted (excludes the more vigorous activities).
  (A) Permanent. A member of the healing arts licensed to practice in Texas must provide the school written documentation concerning the nature of the impairment and the expectations

for physical activity for the student.

(B) Temporary. The student may be restricted from physical activity of the physical education class. A member of the healing arts licensed to practice in Texas must provide the school written documentation concerning the nature of the temporary impairment and the expected amount of time for recovery. During recovery time, the student must continue to learn the concepts of the lessons but may not actively participate in the skill demonstration.

(3) Adapted and remedial (specific activities prescribed or prohibited, as directed by a member of the healing arts licensed to practice in Texas).

A health classification of restricted, adapted and remedial must be determined by a "member of the healing arts", as defined in Chapter 104 of the Occupations Code:

TEC § 28.025

(b-11) Beginning with the 2014-15 school year, if the ARD committee determines that the child is unable to participate in physical activity due to a disability or illness, the child will be allowed to substitute one credit in English language arts, mathematics, science, social studies, or one academic elective credit for the physical education credit required for graduation.

O. Preschool Program for Children with Disabilities

§300.112 Individualized education programs (IEP).

The State must ensure that an IEP, or an IFSP that meets the requirements of section 636(d) of the Act, is developed, reviewed, and revised for each child with a disability in accordance with §§300.320 through 300.324, except as provided in §300.300(b)(3)(ii). (Authority: 20 U.S.C. 1412(a)(4))

(§§300.320 Definition of IEP, .321 IEP Team, .322 Parent Participation, .323 when IEPs must be in effect, .324 Development of IEP)(300.300 b. Parental Consent)

§300.323 When IEPs must be in effect.

(b) IEP or IFSP for children aged three through five.

(1) In the case of a child with a disability aged three through five (or, at the discretion of the SEA, a two-year-old child with a disability who will turn age three during the school year), the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is--

(i) Consistent with State policy; and

(ii) Agreed to by the agency and the child's parents.

(2) In implementing the requirements of paragraph (b)(1) of this section, the public agency must--

(i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and

(ii) If the parents choose an IFSP, obtain written informed consent from the parents.

See also Section 1 – Referral (for transition from ECI to PPCD)

See also Section 5 – Instructional Arrangements

P. Prison

§300.324 Development, review, and revision of IEP

(d) Children with disabilities in adult prisons.

(1) Requirements that do not apply. The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

(i) The requirements contained in §300.160 and §300.320(a)(6) (relating to participation of children with disabilities in general assessments).

(ii) The requirements in §300.320(b) (relating to transition planning and transition services), do not apply with respect to the children whose eligibility under Part B of the Act will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

(2) Modifications of IEP or placement.

(i) Subject to paragraph (c)(2)(ii) of this section, the IEP Team of a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the child's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(ii) The requirements of §§300.320 (relating to IEPs), and 300.114 (relating to LRE), do not apply with respect to the modifications described in paragraph (d)(2)(i) of this section.
Notification of transfer of rights at age 18 must still be provided.

Q. Reading (K – 2nd grade) – Accelerated Instruction

TEC §28.006. Reading Diagnosis.

(a) The commissioner shall develop recommendations for school districts for:
(1) administering reading instruments to diagnose student reading development and comprehension;
(2) training educators in administering the reading instruments; and
(3) applying the results of the reading instruments to the instructional program.

(b) The commissioner shall adopt a list of reading instruments that a school district may use to diagnose student reading development and comprehension. A district-level committee established under Subchapter F, Chapter 11, may adopt a list of reading instruments for use in the district in addition to the reading instruments on the commissioner's list. Each reading instrument adopted by the commissioner or a district-level committee must be based on scientific research concerning reading skills development and reading comprehension. A list of reading instruments adopted under this subsection must provide for diagnosing the reading development and comprehension of students participating in a program under Subchapter B, Chapter 29.

(c) Each school district shall administer, at the kindergarten and first and second grade levels, a reading instrument on the list adopted by the commissioner or by the district-level committee. The district shall administer the reading instrument in accordance with the commissioner's recommendations under Subsection (a)(1).

(g) The WCSESSA shall notify the parent or guardian of each student in kindergarten or first or second grade who is determined, on the basis of reading instrument results, to be at risk for dyslexia or other reading difficulties. The WCSESSA shall implement an accelerated reading instruction program that provides reading instruction that addresses reading deficiencies to those students and shall determine the form, content, and timing of that program. The admission, review, and dismissal committee of a student who participates in WCSESSA's special education program under Subchapter B, Chapter 29, and who does not perform satisfactorily on a reading instrument under this section shall determine the manner in which the student will participate in an accelerated reading instruction program under this subsection.

(h) The WCSESSA shall make a good faith effort to ensure that the notice required under this section is provided either in person or by regular mail and that the notice is clear and easy to understand and is written in English and in the parent or guardian's native language.

R. Regional Day School Program for the Deaf (RDSPD)

TAC §89.1080. Regional Day School Program for the Deaf.

In accordance with the Texas Education Code (TEC), §§30.081-30.087, local school districts shall have access to regional day school programs for the deaf operated by school districts at sites previously established by the State Board of Education (SBOE). Any student who has a hearing impairment which severely impairs processing linguistic information through hearing, even with recommended amplification, and which adversely affects educational performance shall be eligible for consideration for the Regional Day School Program for the Deaf, subject to the admission, review, and dismissal (ARD) committee recommendations.

S. STAAR – State of Texas Assessment of Academic Readiness

§300.160 Participation in assessments.

(a) General. A State must ensure that all children with disabilities are included in all general State and district-wide assessment programs, including assessments described under section 1111 of the ESEA, 20 U.S.C. 6311, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs.

(b) Accommodation guidelines.

(1) A State (or, in the case of a district-wide assessment, an LEA) must develop guidelines for the provision of appropriate accommodations.

(2) The State's (or, in the case of a district-wide assessment, the LEA's) guidelines must—

(i) Identify only those accommodations for each assessment that do not invalidate the score; and

(ii) Instruct IEP Teams to select, for each assessment, only those accommodations that do not invalidate the score.

(c) Alternate assessments.

(1) A State (or, in the case of a district-wide assessment, an LEA) must develop and implement alternate assessments and guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments, even with accommodations, as indicated in their respective IEPs, as provided in paragraph (a) of this section.

(2) For assessing the academic progress of students with disabilities under Title I of the ESEA, the alternate assessments and guidelines in paragraph (c)(1) of this section must provide for alternate assessments that—

(i) Are aligned with the State's challenging academic content standards and challenging student academic achievement standards;

(ii) If the State has adopted alternate academic achievement standards permitted in 34 CFR 200.1(d), measure the achievement of children with the most significant cognitive disabilities against those standards; and

(iii) Except as provided in paragraph (c)(2)(ii) of this section, a State's alternate assessments, if any, must measure the achievement of children with disabilities against the State's grade-level academic achievement standards, consistent with 34 CFR 200.6(a)(2)(ii)(A).

(3) Consistent with 34 CFR 200.1(e), a State may not adopt modified academic achievement standards for any students with disabilities under section 602(3) of the Act.

(d) Explanation to IEP Teams. A State (or in the case of a district-wide assessment, the WCSESSA) must—

(1) Provide to IEP teams a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on alternate academic achievement standards, including any effects of State and local policies on a student's education resulting from taking an alternate assessment aligned with alternate academic achievement standards, such as how participation in such assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma; and

(2) Not preclude a student with the most significant cognitive disabilities who takes an alternate assessment aligned with alternate academic achievement standards from attempting to complete the requirements for a regular high school diploma.

(e) Inform parents. A State (or in the case of a district-wide assessment, a WCSESSA) must ensure that parents of students selected to be assessed using an alternate assessment aligned with alternate academic achievement standards under the State's guidelines in paragraph (c)(1) of this section are informed, consistent with 34 CFR 200.2(e), that their child's achievement will be measured based on alternate academic achievement standards, and of how participation in such assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma.

(f) Reports. An SEA (or, in the case of a district-wide assessment, an LEA) must make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

(1) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations (that did not result in an invalid score) in order to participate in those assessments.

(2) The number of children with disabilities, if any, participating in alternate assessments based on grade level academic achievement standards in school years prior to 2017-2018.

(3) The number of children with disabilities, if any, participating in alternate assessments based on aligned with modified academic achievement standards in school years prior to 2016-2017.

(4) The number of children with disabilities who are students with the most significant cognitive disabilities participating in alternate assessments based on aligned with alternate academic achievement standards.

(5) Compared with the achievement of all children, including children with disabilities, the performance results of children with disabilities on regular assessments, alternate assessments based on grade-level academic achievement standards (prior to 2017-2018), alternate assessments based on modified academic achievement standards (prior to 2016-2017), and alternate assessments based on aligned with alternate academic achievement standards if—

(i) The number of children participating in those assessments is sufficient to yield statistically reliable information; and

(ii) Reporting that information will not reveal personally identifiable information about an individual student on those assessments.

(g) Universal design. An SEA (or, in the case of a district-wide assessment, an LEA) must, to the extent possible, use universal design principles in developing and administering any assessments under this section. (Authority: 20 U.S.C. 1412(a)(16))

§300.320 Definition of individualized education program.

(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include—

(6) (i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with §300.160; and

(ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why--

(A) The child cannot participate in the regular assessment; and

(B) The particular alternate assessment selected is appropriate for the child.

TAC §89.1055. Content of the Individualized Education Program (IEP).

(b) The IEP must include a statement of any individual appropriate and allowable accommodations in the administration of assessment instruments developed in accordance with Texas Education Code (TEC), §39.023(a)-(c), or districtwide assessments of student achievement (if the district administers such optional assessments) that are necessary to measure the academic achievement and functional performance of the student on the assessments. If the ARD committee determines that the student will not participate in a general statewide or districtwide assessment of student achievement (or part of an assessment), the IEP must include a statement explaining:

(1) why the student cannot participate in the general assessment; and

(2) why the particular alternate assessment selected is appropriate for the student.

http://tea.texas.gov/Student_Testing_and_Accountability/Testing/

End of Course: Assessed Curriculum, Blueprint and Released Test Questions
http://tea.texas.gov/student.assessment/staar/
TAC §101.3022. Assessment Requirements for Graduation. (See Section 4a. **VIII. F.** Graduation) or TAC §101.4002. STAAR End-of-Course Substitute Assessments. http://ritter.tea.state.tx.us/rules/tac/chapter101/

For ELL State Assessments, see Section L.

Assessments from TEA:

In spring 2012, the State of Texas Assessments of Academic Readiness (STAAR®) replaced the Texas Assessment of Knowledge and Skills (TAKS). The STAAR program measures the Texas curriculum standards which is called Texas Essential Knowledge and Skills (TEKS).
http://tea.texas.gov/Student_Testing_and_Accountability/Testing/Testing/

Staff Training

The WCSESSA special education director/coordinators will work closely with the district testing coordinator to ensure special education staff is provided continuous training with local campus staff.
The WCSESSA will follow the TEA recommendations found online. Training of special education staff will be held annually. The WCSESSA follows the most current Assessment Guidance available through the TEA Student Assessment Division for ARD Resource and Special Education Assessment information:
http://tea.texas.gov/student.assessment/special-ed/

Allowable Accommodations from TEA:

Continuously updated information regarding accommodations can be found on the TEA website.
http://www.tea.state.tx.us/student.assessment/accommodations/staar-telpas/

ARD/IEP Committee

It is important to emphasize that the instructional decisions made by the admission, review, and dismissal (ARD) committee and documented in the individualized education program (IEP) must always guide assessment decisions for students receiving special education services.

For students with disabilities working below their enrolled grade level, it is the responsibility of all of us—the state as well as the district, campuses, and classroom teachers—to work with parents and other members of the community to understand and provide the support these students need to reach their academic potential. All students have the right to be exposed to as much of an on-grade-level curriculum as possible.
The ARD committee must weigh the benefits of rigorous and challenging expectations given each student's individual strengths, needs, instruction, and accommodations. As always, the ARD committee should first consider administering the State of Texas Assessments of Academic Readiness (STAAR) when making assessment decisions.

Also, locally we will provide a notebook in the ARDC rooms on each campus with copies of information from the TEA website as a quick reference guide to Frequently asked Questions as well as other important TEA information and charts printed from the website. An example found on the TEA website includes STAAR Time Limits as in the abbreviated example below:
www.tea.state.tx.us/student.assessment/special-ed/

Information about special education assessments and accommodations for the State of Texas Assessments of Academic Readiness (STAAR) are posted as they become available. The admission, review, and dismissal (ARD) committee determines which assessment is appropriate for each student based upon his/her individual needs. In order to make this decision, ARD committees must be familiar with the testing options available to students as well as what accommodations are available. In addition, ARD committees must be aware of how their decisions impact a student's academic future.
http://www.tea.state.tx.us/student.assessment/staar/
or the STAAR Alt website: http://tea.texas.gov/student.assessment/special-ed/staaralt/

For continuous updates from TEA and for frequently asked questions to the new STAAR we will refer to the TEA website: http://www.tea.state.tx.us/student.assessment/special-ed/

We will train staff to follow guidance as provided from the TEA documents and website.

1. STAAR

The STAAR program includes annual assessments for:

- Reading and mathematics, grades 3-8
- Writing at grades 4 and 7
- Science at grades 5 and 8
- Social studies at grade 8
- End-of-course (EOC) assessments for English I, English II, Algebra I, biology and U.S. History
- Beginning in 2016, TEA will voluntarily administer STAAR EOC assessments for English III and Algebra II

TEC §39.023. ADOPTION AND ADMINISTRATION OF INSTRUMENTS
SECTION 2. Effective September 1, 2021
(a) The agency shall adopt or develop appropriate criterion-referenced assessment instruments designed to assess essential knowledge and skills in reading ~~[writing]~~, mathematics, social studies, and science. Except as provided by Subsection (a-2), all students, other than students assessed under Subsection (b) or (l) or exempted under Section 39.027, shall be assessed in:
(1) mathematics, annually in grades three through ~~[seven without the aid of technology and in grade]~~ eight ~~[with the aid of technology on any assessment instrument that includes algebra]~~;
(2) reading, annually in grades three through eight;
(3) ~~[writing, including spelling and grammar, in grades four and seven;~~
~~(4)~~ social studies, in grade eight;
(4) ~~(5)~~ science, in grades five and eight; and
(5) ~~(6)~~ any other subject and grade required by federal law.

Current information on STAAR assessments pertaining to students with disabilities may be found on the TEA website: http://tea.texas.gov/student.assessment/special-ed/

Allowable accommodations are found in the Coordinator's Manuals provided by the TEA. The accommodations listed in the manual will be followed as required by TEA and determined by the ARD/IEP committee for each individual student. The Coordinator's Manual also lists accommodations which are non-allowable.

2. STAAR A

2. STAAR - Alt. 2

The Texas Education Agency (TEA) has developed the State of Texas Assessments of Academic Readiness Alternate (STAAR™ Alternate) to take the place of the TAKS Alt. STAAR Alternate is designed for the purpose of assessing students in grades 3–8 and high school who have significant cognitive disabilities and are receiving special education services. STAAR Alternate beginning in 2011–2012. For most current updates see: *http://www.tea.state.tx.us/student.assessment/special-ed/staaralt/essence/ and http://tea.texas.gov/student.assessment/special-ed/staaralt/*

§89.1226. Testing and Classification of Students, Beginning with School Year 2019-2020.

(l) For English learners who are also eligible for special education services, the standardized process for English learner program exit is followed in accordance with applicable provisions of subsection (i) of this section. However, annual meetings to review student progress and make recommendations for program exit must be made in all instances by the language proficiency assessment committee in conjunction with the ARD committee in accordance with §89.1230(b) of this title (relating to Eligible Students with Disabilities). Additionally, the language proficiency committee in conjunction with the ARD committee shall implement assessment procedures that differentiate between language proficiency and disabling conditions in accordance with §89.1230(a) of this title.

(m) For an English learner with significant cognitive disabilities, the language proficiency assessment committee in conjunction with the ARD committee may determine that the state's English language proficiency assessment for exit is not appropriate because of the nature of the student's disabling condition. In these cases, the language proficiency assessment committee in conjunction with the ARD committee may recommend that the student take the state's alternate English language proficiency assessment and shall determine an appropriate performance standard requirement for exit by language domain under subsection (i)(1) of this section;

For full text of TAC §89.1226 go to: http://ritter.tea.state.tx.us/rules/tac/chapter089/ch089bb.html

§101.6001. Texas Middle School Diagnostic Reading Assessment.

(a) Each school district shall administer during the first six weeks of the school year the diagnostic reading instrument specified in subsection (c) of this section to each student in Grade 7 whose performance on the Grade 6 statewide reading assessment did not meet the passing standard. The admission, review, and dismissal committee or the Section 504 committee for each student who was administered an alternate form of the state assessment in reading may determine if the diagnostic assessment is appropriate for use with that student.

REQUIRED EXPLANATION OF STATE /DISTRICT-WIDE TESTING FOR THE IEP TEAM - INCLUDING PARENTS:

In order to meet all of the requirements listed above regarding state and district-wide testing, the following questions must be addressed in the IEP meeting. If the IEP Team determines, based on analysis of current data, that the student cannot take the State or district-wide assessments, provide the following information:

A. Specify why the child cannot participate in the regular assessment.

B. List the particular alternate assessment selected that is appropriate for the child.

C. Provide documentation (multiple records and multiple sources of information) to answer ALL of the following questions in the affirmative.

- requires supports to access the general curriculum that may include assistance involving communication, response style, physical access, or daily living skills,
- requires direct, intensive, individualized instruction in a variety of settings to accomplish the acquisition, maintenance and generalization of skills,
- accesses and participates in the grade-level Texas Essential Knowledge and Skills (TEKS) through activities that focus on prerequisite skills,
- demonstrates knowledge and skills routinely in class by methods other than paper and pencil tasks, and
- demonstrates performance objectives that may include real life applications of the grade-level TEKS as appropriate to the student's abilities and needs.

D. Explain clearly the differences between assessments based on grade-level academic achievement standards and those based on modified or alternate academic achievement standards.

E. Explain clearly the effects on the student's education resulting from taking an alternate assessment based on alternate or modified academic achievement standards (such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma).

Definitions Below:

Accountability: *refers to an individual or group of individuals taking responsibility for the performance of students on achievement measures or other types of educational outcomes (e.g. dropout rates.)*

Alternate Assessment: *an assessment that is different from the one administered to most students. It is best viewed as the "process" for collecting information about what a student knows and can do. The majority of students participate in statewide assessments, some by using accommodations. Some students, however, are unable to take the test even with accommodation. For these students, a state must design an alternate way of determining their learning /learning progress. (Massanari, Carol B.,1999)*

Alternate or modified academic achievement standards: *a tailored/personalized measurement of a child's attainment or accomplishment of the standards for academic areas of reading, writing, math. This alternate or modified measurement is not the same as the STAAR measurement used with the regular education majority of students.*

Differences *: While the majority of regular education students will be administered STAAR assessment, the alternate or modified academic achievement standards will be based on the student's functional performance data gathered by the IEP Team and will be individualized at the student's functioning level and not at the assigned grade level.*

Effects *on the student's education resulting from taking an alternate assessment based on alternate or modified academic achievement standards* ***:***

- *satisfactory performance on the regular STAAR assessment will qualify the student for a regular high school diploma if all credits and other requirements are also met*
- *satisfactory performance on an alternate assessment will qualify the student for a regular high school diploma if all credits and other requirements are also met, however, the following implication should be discussed: taking an assessment other than STAAR limits the student's preparation for post secondary training above the Jr. college entry level.*

Accommodation that does not invalidate the test: *an adjustment, change, or adaptation made to an assessment or the process of administering an assessment to students with special needs. This term generally refers to changes that do not significantly alter what the test measures. It results from a student need and it is not intended to give the student an unfair advantage. All accommodations must be identified in the student's IEP (CEC and the Learning Network 2000-2001).*

Benchmarks: *are statements of what all students should know and be able to do in a content area by the end of grade levels 4, 8, and 12.*

Content Standards: *are broad descriptions of knowledge and skills students should acquire in a particular subject area.*

Criterion-Referenced Test: *a test that is designed to provide information on the specific knowledge or skills possessed by a student. Such tests are designed to measure the objectives of instruction, skill levels, or areas of knowledge. Their scores have meaning in terms of what the student knows and can do, rather than in their relation to the scores made by some comparison to a norm group (Tuckman, B, 1986).*

Functional Tasks: *skills used in everyday life or that prepare students for life after graduation. These skills include those required for personal maintenance and development, homemaking, and community life, work and career, recreational activities and travel within the community (Smith, D.D., 1998).*

High Stakes Assessment: *state and or district-wide tests that have important consequences for students, staff, or schools (CEC and the Learning Network 2000-2001).*

Large Scale Assessments: *these assessments show how students are performing against state standards or national norms, and to hold school districts accountable for student performance (CEC and the Learning Network 2000-2001).*

Norm-referenced Test: *a test designed to provide information on the performance of test takers relative to one another. It measures basic concepts and skills commonly taught in schools throughout the country. These tests are not designed as precise measures of any given curriculum or single instructional program. The results provide information that compares a student's achievement with that of a representative national sample. (Tuckman, B. 1986).*

Performance-based Assessment: *a task that enables a student to demonstrate abilities to meet objectives or standards (Campbell, Melenyzer, Nettles, and Wyman, 2000).*

Rubric: *a set of criteria and a scoring scale that is used to assess and evaluate students' work (Campbell, Melenyzer, Nettles, and Wyman, 2000).*

Standardized Test *: a type of test that is always administered and scored in the same way. These tests have norms reflecting a larger population (usually these ate age or grade based norms reflecting the performance of children throughout the country on the same tests.*

T. Student Success Initiative (SSI)

http://tea.texas.gov/student.assessment/ssi/

Excerpts below from: Grade Placement Committee Manual: for Grade Advancement Requirements of the SSI TEC §28.0211 and TAC §101 *For continuous updated information, refer to the TEA website: http://tea.texas.gov/student.assessment/ssi/*

Students Receiving Special Education Services

The flowcharts found on the TEA website outline how the SSI grade advancement requirements affect students served by special education. **In the case where a student's IEP states that the student is to take STAAR and the student does not meet SSI assessment expectations, the ARD committee will serve as the GPC-Grade Placement Committee.** §101.2003. Grade Advancement Testing Requirements (d and f).

TEC §28.021. STUDENT ADVANCEMENT.
http://www.statutes.legis.state.tx.us/Docs/ED/htm/ED.28.htm#28.021

TEC §28.0211. SATISFACTORY PERFORMANCE ON ASSESSMENT INSTRUMENTS REQUIRED; ACCELERATED INSTRUCTION.

(i) The admission, review, and dismissal committee of a student who participates in a district's special education program under Subchapter A [B], Chapter 29, and who does not perform satisfactorily on an assessment instrument specified under Subsection (a) and administered under Section 39.023(a) or (b) must meet before the student is administered the assessment instrument for the second time. The committee shall determine:
  (1) the manner in which the student will participate in an accelerated instruction program under this section; and
  (2) whether the student will be promoted in accordance with Subsection (i-1) or retained under this section. *The ARD committee will design an intensive program of instruction to enable the student, to the extent practicable, perform at the student's grade level at the conclusion of the next regular school term; or attain the state required standard of mastery.*

  http://www.statutes.legis.state.tx.us/Docs/ED/htm/ED.28.htm

(i-1) At a meeting of the admission, review, and dismissal committee of a student under Subsection (i), the committee may promote the student to the next grade level if the committee concludes that the student has

made sufficient progress in the measurable academic goals contained in the student's individualized education program developed under Section 29.005. A school district that promotes a student under this subsection is not required to provide an additional opportunity for the student to perform satisfactorily on the assessment instrument.

(i-2) Not later than September 1 of each school year, a school district must notify the parent or person standing in parental relation to a student enrolled in the district's special education program under Subchapter A, Chapter 29, of the options of the admission, review, and dismissal committee under Subsections (i) and (i-1) if the student does not perform satisfactorily on an assessment instrument.

SECTION 2. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

TEC §39.024. Satisfactory Performance

(a) Except as otherwise provided by this subsection, the State Board of Education shall determine the level of performance considered to be satisfactory on the assessment instruments. The admission, review, and dismissal committee of a student being assessed under Section 39.023(b) shall determine the level of performance considered to be satisfactory on the assessment instruments administered to that student in accordance with criteria established by agency rule.

TEC § 39.023. Adoption and Administration of Instruments
http://www.statutes.legis.state.tx.us/Docs/ED/htm/ED.39.htm

U. Supplementary Aids and Services - Accommodations

§300.42 Supplementary aids and services. Supplementary aids and services means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§300.114 through 300.116.

Accommodations

The ARD/IEP Committee will make appropriate recommendations for individual students receiving special education services. In making recommendations, the WCSESSA staff will follow the TEA guidelines located in the Accommodations Manual sent to districts. The manual is also posted on the TEA Student Assessment website.

** Specific pages in the manual provide information on accommodations by assessment and accommodations category. Information in italics indicates that an Accommodation Request Form is required.*

** Student Assessment will provide information to districts regarding the provision of adequate objective evidence when submitting an Accommodation Request Form (ARF).*

http://tea.texas.gov/student.assessment/accommodations/

§300.320 Definition of individualized education program.

(a) (4) A statement of the 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, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child--

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;

Special education, related services and supplementary aids and services based on peer reviewed research to the extent practicable means to the extent that research is possible and available. Services with the greatest body of research are not necessarily the service required for a child to receive FAPE. An IEP is not required to include specific instructional methodologies unless the IEP committee agrees it is necessary for the child to receive FAPE. The final decision must be made by the child's IEP team based on the individual needs of the child.

If a qualified student with a disability requires related aids and services to participate in a regular education class or program (including accelerated classes) then the student must receive those related aids and services.

Additional information on scientifically based research and response to intervention resources may be found on the Region 10 ESC Special Education website.

https://www.region10.org/programs/scientifically-based-research/overview/

V. Tape or Video Recording

TEC §29.005.

(d) If the child's parent is unable to speak English, the WCSESSA shall:

(1) 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; or

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

The WCSESSA, the parent, or the adult student may audio-record the ARD/IEP committee meeting. All participants in the meeting will be informed that such a recording is being made. If a parent or adult student notifies the ARD/IEP committee that they will record the meeting, the district should also record the meeting and put a reference to the audio-tape in the student's special education eligibility folder. The audio tape will be kept confidential and located with the eligibility folder.

TEC §26.009. Consent Required for Certain Activities. (video taping)

(a) An employee of WCSESSA must obtain the written consent of a child's parent before the employee may:

(1) conduct a psychological examination, test, or treatment, unless the examination, test, or treatment is required under Section 38.004 or state or federal law regarding requirements for special education; or

(2) make or authorize the making of a videotape of a child or record or authorize the recording of a child's voice.

(b) An employee of WCSESSA is not required to obtain the consent of a child's parent before the employee may make a videotape of a child or authorize the recording of a child's voice if the videotape or voice recording is to be used only for:

(1) purposes of safety, including the maintenance of order and discipline in common areas of the school or on school buses;

(2) a purpose related to a cocurricular or extracurricular activity;

(3) a purpose related to regular classroom instruction; or

(4) media coverage of the school.

W. TAKS – see STAAR

X. Texas School for the Deaf (TSD) and Texas School for the Blind and Visually Impaired (TSBVI)

TEC §30.004. Information Concerning Programs.

(a) The WCSESSA shall provide each parent or other person having lawful control of a student with written information about:

(1) the availability of programs offered by state institutions for which the district's students may be eligible;

(2) the eligibility requirements and admission conditions imposed by each of those state institutions; and

(3) the rights of students in regard to admission to those state institutions and in regard to appeal of admission decisions.

(b) The State Board of Education shall adopt rules prescribing the form and content of information required by Subsection (a).

The MOU for AI and/or Visual Impairments is found on the TEA website: http://tea.texas.gov/index2.aspx?id=2147494979

Health and Human Services agency assists Blind or Visually Impaired individuals and their families and offers an ECI-Early Childhood Intervention Program for families with children birth to three, with disabilities and developmental delays.

https://hhs.texas.gov/services/disability/early-childhood-intervention-services

TAC §89.1085. Referral for the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf Services.

(a) A student's admission, review, and dismissal (ARD) committee may place the student at the Texas School for the Blind and Visually Impaired (TSBVI) or the Texas School for the Deaf (TSD) in accordance with the provisions of 34 Code of Federal Regulations (CFR), Part 300, the Texas Education Code (TEC), including, specifically, §§30.021, 30.051, and 30.057, and the applicable rules of this subchapter.

(b) In the event that a student is placed by his or her ARD committee at either the TSBVI or the TSD, the student's "resident school district," as defined in subsection (e) of this section, shall be responsible for assuring that a free appropriate public education (FAPE) is provided to the student at the TSBVI or the TSD, as applicable, in accordance with the Individuals with Disabilities Education Act (IDEA), 20 United States Code (USC), §§1400 et seq., 34 CFR, Part 300, state statutes, and rules of the State Board of Education (SBOE) and the commissioner of education. If representatives of the resident school district and representatives of the TSBVI or the TSD disagree, as members of a student's ARD committee, with respect to a recommendation by one or more members of the student's ARD committee that the student be evaluated for placement, initially placed, or continued to be placed at the TSBVI or TSD, as applicable, the representatives of the resident school district and the TSBVI or TSD, as applicable, may seek resolution through the mediation procedures adopted by the Texas Education Agency or through any due process hearing to which the resident school district or the TSBVI or the TSD are entitled under the IDEA, 20 USC, §§1400, et seq.

(c) When a student's ARD committee places the student at the TSBVI or the TSD, the student's resident school district shall comply with the following requirements.
  (1) For each student, the resident school district shall list those services in the student's individualized education program (IEP) which the TSBVI or the TSD can appropriately provide.
  (2) The district may make an on-site visit to verify that the TSBVI or the TSD can and will offer the services listed in the individual student's IEP and to ensure that the school offers an appropriate educational program for the student.
  (3) For each student, the resident school district shall include in the student's IEP the criteria and estimated time lines for returning the student to the resident school district.

(d) In addition to the provisions of subsections (a)-(c) of this section, and as provided in TEC, §30.057, the TSD shall provide services in accordance with TEC, §30.051, to any eligible student with a disability for whom the TSD is an appropriate placement if the student has been referred for admission by the student's parent or legal guardian, a person with legal authority to act in place of the parent or legal guardian, or the student, if the student is age 18 or older, at any time during the school year if the referring person chooses the TSD as the appropriate placement for the student rather than placement in the student's resident school district or regional program determined by the student's ARD committee. For students placed at the TSD pursuant to this subsection, the TSD shall be responsible for assuring that a FAPE is provided to the student at the TSD, in accordance with IDEA, 20 USC, §§1400, et seq., 34 CFR, Part 300, state statutes, and rules of the SBOE and the commissioner of education.

(e) For purposes of this section and §89.1090 of this title (relating to Transportation of Students Placed in a Residential Setting, Including the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf), the "resident school district" is the school district in which the student would be enrolled under TEC, §25.001, if the student were not placed at the TSBVI or the TSD.

TAC §89.1090. Transportation of Students Placed in a Residential Setting, Including the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf.

See Related Services Section for Transportation

Y. Transition Planning

§300.320 Definition of individualized education program

(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include--

(1) ---

(2) (i) A statement of measurable annual goals, including academic and functional goals designed to--

(A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

(B) Meet each of the child's other educational needs that result from the child's disability;

(ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

(b)Transition services. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include--

(1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

(2) The transition services (including courses of study) needed to assist the child in reaching those goals.

(3) A description of--

(i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and

(ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

(4) (For §300.320 in its entirety, please see Section 4a.)

TEC § 29.0111. Beginning of Transition Planning. Appropriate state transition planning under the procedure adopted under Section 29.011 must begin for a student not later than when the student reaches 14 years of age.

The special education case manager or teacher or VAC or Transition Specialist will meet with the student at least annually to complete the following activities prior to the IEP meeting.

- *Assist student to determine strengths, interests, preferences for future career goals,*
- *Discuss with student coordinated set of activities necessary to further goals including the minimum, recommended, distinguished graduation/career plan, CTE electives, etc.*
- *Determine if Transition Assessments are completed or additional needed,*
  - *Transition Assessments may be formal or informal. Formal assessments may include those purchased by the district: Career Cruising, Kuder, MECA, Adaptive Behavior Assessment, etc. or include ONet Profiler, OASIS Aptitude Survey, ASVAB, etc.*
  - *Informal assessments used include but are not limited to: situational or observational assessments, structured interviews, questionnaires, environmental analysis, work sample task analysis, portfolios, inventories and personal planning with student and family.*
- *Assist student to articulate his/her postsecondary goals based on identifying strengths, interest, career research, etc.*
- *Assist student to prepare for sharing his/her postsecondary goals in the IEP meeting. (not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team)*

For information on the Functional Vocational Evaluation – see Section 2.

§300.43 Transition services.

(a)Transition services means a coordinated set of activities for a child with a disability that--

(1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(2) Is based on the individual child's needs, taking into account the child's strengths, preferences and interests; and includes--

(i) Instruction;

(ii) Related services;

(iii) Community experiences;

(iv) The development of employment and other post-school adult living objectives; and

(v) If appropriate, acquisition of daily living skills and functional vocational evaluation.

(b)Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education. (Authority: 20 U.S.C. 1401(34))

§300.321 IEP Team

(b)Transition services participants.

(1) In accordance with paragraph (a)(7) of this section, the WCSESSA must invite a child with a disability to attend the child's IEP meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under §300.320(b).

(2) If the child does not attend the IEP meeting, the WCSESSA must take other steps to ensure that the child's preferences and interests are considered.

(3) To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of paragraph (b)(1) of this section, the WCSESSA must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

Provide a print out of special education students for the diagnostician / VAC / case manager to note who will be turning 18 years old and their birth date. Provide "Rights" document and obtain signature of adult student to document transfer of rights.

§300.322 Parent Participation

(b)Information provided to parents.

(1) The notice required for the IEP meeting must--

(i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and

(ii) Inform the parents of the provisions in §300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child).

(2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must--

(i) Indicate--

(A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with §300.320(b); and

(B) That the agency will invite the student; and

(ii) Identifies any other agency that will be invited to send a representative.

§300.324 (c) Failure to meet transition objectives.

(1) Participating agency failure. If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with §300.320(b), the public agency must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

(2) Construction. Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.

TAC §89.1055. Content of the Individualized Education Program (IEP).

(h) In accordance with TEC, §29.011 and §29.0111, not later than when a student reaches 14 years of age, the ARD committee must consider, and if appropriate, address the following issues in the IEP:

(1) appropriate student involvement in the student's transition to life outside the public school system;

(2) if the student is younger than 18 years of age, appropriate parental involvement in the student's transition;

(3) if the student is at least 18 years of age, appropriate parental involvement in the student's transition, if the parent is invited to participate by the student or the school district in which the student is enrolled;

(4) any postsecondary education options;

(5) a functional vocational evaluation;

(6) employment goals and objectives;

(7) if the student is at least 18 years of age, the availability of age-appropriate instructional environments;

(8) independent living goals and objectives; and

(9) appropriate circumstances for referring a student or the student's parents to a governmental agency for services.

(i) In accordance with 34 CFR, §300.320(b), beginning not later than the first IEP to be in effect when the student turns 16 years of age, or younger if determined appropriate by the ARD committee, and updated annually thereafter, the IEP must include the following:

(1) appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

(2) the transition services, including courses of study, needed to assist the student in reaching the postsecondary goals developed under paragraph (1) of this subsection.

TEC §29.011. Transition Planning.

(a) The commissioner shall by rule adopt procedures for compliance with federal requirements relating to transition services for students who are enrolled in special education programs under this subchapter. The procedures must specify the manner in which a student's admission, review, and dismissal committee must consider, and if appropriate, address the following issues in the student's individualized education program:
(1) appropriate student involvement in the student's transition to life outside the public school system;
(2) if the student is younger than 18 years of age, appropriate ~~parental~~ involvement in the student's transition by the student's parents and other persons invited to participate by:
(A) the student's parents; or
(B) the school district in which the student is enrolled;
(3) if the student is at least 18 years of age, ~~appropriate parental~~ involvement in the student's transition and future by the student's parents and other persons,, if the parent or other person:
(A) is invited to participate by the student or the school district in which the student is enrolled; or
(B) has the student's consent to participate pursuant to a supported decision-making agreement under Chapter 1357, Estates Code;
(4) appropriate ~~any~~ postsecondary education options, including preparation for postsecondary-level coursework;
(5) an appropriate ~~a~~ functional vocational evaluation;
(6) appropriate employment goals and objectives;
(7) if the student is at least 18 years of age, the availability of age-appropriate instructional environments, including community settings or environments that prepare the student for postsecondary education or training, competitive integrated employment, or independent living, in coordination with the student's transition goals and objectives;
(8) appropriate independent living goals and objectives; ~~and~~
(9) appropriate circumstances for facilitating a referral of ~~referring~~ a student or the student's parents to a governmental agency for services or public benefits, including a referral to a governmental agency to place the student on a waiting list for public benefits available to the student, such as a waiver program established under Section 1915(c), Social Security Act (42 U.S.C. Section 1396n(c)); and
(10) the use of availability of appropriate:
(A) supplementary aids, services, curricula, and other opportunities to assist the student in developing decision-making skills; and
(B) supports and services to foster the student's independence and self-determination, including a supported decision-making agreement under Chapter 1357, Estates Code.

(a-1) A student's admission, review, and dismissal committee shall annually review the issues described by Subsection (a) and, if necessary, update the portions of the student's individualized education program that address those issues.

(a-2) The commissioner shall develop and post on the agency's Internet website a list of services and public benefits for which referral may be appropriate under Subsection (a)(9).

(b) The commissioner shall require each school district or shared services arrangement to designate at least one employee to serve as the district's or shared services arrangement's designee on transition and employment services for students enrolled in special education programs under this subchapter. The commissioner shall develop minimum training guidelines for a district's or shared services arrangement's designee. An individual designated under this subsection must provide information and resources about effective transition planning and services, including each issue described by Subsection (a), and interagency coordination to ensure that local school staff communicate and collaborate with:
(1) students enrolled in special education programs under this subchapter and the parents of those students; and
(2) as appropriate, local and regional staff of the:
(A) Health and Human Services Commission;
(B) Texas Workforce Commission ~~Department of Aging and Disability Services~~;
~~(C) Department of Assistive and Rehabilitative Services;~~
(C) ~~(D)~~ Department of State Health Services; and
(D) ~~(E)~~ Department of Family and Protective Services.

(c) The commissioner shall review and, if necessary, update the minimum training guidelines developed under Subsection (b) at least once every four years. In reviewing and updating the guidelines, the commissioner

shall solicit input from stakeholders.

Sections 29.011, Education Code, as amended by this Act, apply beginning with the 2018-2019 school year.

Sec. 29.0112. TRANSITION AND EMPLOYMENT GUIDE.

(a) The agency, with assistance from the Health and Human Services Commission, shall develop a transition and employment guide for students enrolled in special education programs and their parents to provide information on statewide services and programs that assist in the transition to life outside the public school system. The agency may contract with a private entity to prepare the guide.

(b) The transition and employment guide must be written in plain language and contain information specific to this state regarding:
  (1) transition services;
  (2) employment and supported employment services;
  (3) social security programs;
  (4) community and long-term services and support, including the option to place the student on a waiting list with a governmental agency for public benefits available to the student, such as a waiver program established under Section 1915(c), Social Security Act (42 U.S.C. Section 1396n(c));
  (5) postsecondary educational programs and services;
  (6) information sharing with health and human services agencies and providers;
  (7) guardianship and alternatives to guardianship, including a supported decision-making agreement under Chapter 1357, Estates Code;
  (8) self-advocacy, person-directed planning, and self-determination; and
  (9) contact information for all relevant state agencies.

(c) The transition and employment guide must be produced in an electronic format and posted on the agency's website in a manner that permits the guide to be easily identified and accessed.

(d) The agency must update the transition and employment guide posted on the agency's website at least once every two years.

(e) A school district shall:
  (1) post the transition and employment guide on the district's website if the district maintains a website; ~~and~~
  (2) provide written information and, if necessary, assistance to a student or parent regarding how to access the electronic version of the guide at:
    (A) the first meeting of the student's admission, review, and dismissal committee at which transition is discussed; and or
    (B) the first committee meeting at which transition is discussed that occurs after the date on which the guide is updated; and
  (3) on request, provide a printed copy of the guide to a student or parent ~~[becomes available, if a student has already had an admission, review, and dismissal committee meeting discussing transition]~~.

Sections 29.0112, Education Code, as amended by this Act, apply beginning with the 2018-2019 school year.

TEC §29.017. Transfer of Parental Rights at Age of Majority.

(a) 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, shall have the same right to make educational decisions as a student without a disability, except that the MISD shall provide any notice required by this subchapter or 20 U.S.C. Section 1415 to both the student and the parents. All other rights accorded to parents under this subchapter or 20 U.S.C. Section 1415 transfer to the student.

(b) All rights accorded to parents under this subchapter or 20 U.S.C. Section 1415 transfer to students who are incarcerated in an adult or juvenile, state or local correctional institution.

(c) Not later than one year before the 18th birthday of a student with a disability, the school district at which the student is enrolled shall:
  (1) provide to the student and the student's parents:
    (A) written notice regarding the transfer of rights under this section; and
    (B) information and resources regarding guardianship, alternatives to guardianship, including a supported decision-making agreement under Chapter 1357, Estates Code, and other supports and services that may enable the student to live independently; and
  (2) ensure that the student's individualized education program includes a statement that the district provided the notice, information, and resources required under Subdivision (1).

(c-1) In accordance with 34 C.F.R. Section 300.520 ~~[300.517]~~, the school district shall provide written notice to ~~[notify]~~ the student and the student's parents of the transfer of rights under this section. The notice must include the information and resources provided under Subsection (c)(1)(B).

(c-2) If a student with a disability or the student's parent requests information regarding guardianship or alternatives to guardianship from the school district at which the student is enrolled, the school district shall provide to the student or parent information and resources on supported decision-making agreements under Chapter 1357, Estates Code.

(c-3) The commissioner shall develop and post on the agency's Internet website a model form for use by school districts in notifying students and parents as required by Subsections (c) and (c-1). The form must include the information and resources described by Subsection (c). The commissioner shall review and update the form, including the information and resources, as necessary.

(d) The commissioner shall develop and post on the agency's Internet website the information and resources described by Subsections (c), (c-1), and (c-2).

(e) Nothing in this section prohibits a student from entering into a supported decision-making agreement under Chapter 1357, Estates Code, after the transfer of rights under this section.

(f) The commissioner shall adopt rules implementing the provisions of 34 C.F.R. Section 300.520(b) ~~[300.517(b)]~~.

SECTION 4. This Act applies beginning with the 2018-2019 school year.

TAC §1357.003. Supported Decision Making Agreement Act.

PURPOSE: The purpose of this chapter is to recognize a less restrictive alternative to guardianship for adults with disabilities who need assistance with decisions regarding daily living but who are not considered incapacitated persons for purposes of establishing a guardianship under this title. (For full text click link.)

http://www.statutes.legis.state.tx.us/Docs/ES/htm/ES.1357.htm

Parents will be made aware of the Alternatives to Guardianship rules and sample form provided by §1357.056 at the ARD meeting to explain the student will be reaching "Age of Majority."

*For specific requirements for **SPP Indicator 13 and 14** see Section 8. Administration.*

New MOU dated 8-31-2017, Effective 9-1-2017: https://tea.texas.gov/index2.aspx?id=2147496883

In 2019, the Texas Legislature passed Senate Bill 1017 which requires the Texas Higher Education Coordinating Board (THECB) to create an advisory council on postsecondary education for persons with intellectual and developmental disabilities (IDD). The advisory council is tasked with developing educational outreach materials to raise awareness in Texas of postsecondary education opportunities. The appropriate staff will be watchful for information and opportunities to share with our students and their parents.

In 2019, the Texas Legislature passed Senate Bill 2038 which amended the Labor Code to read: Sec. 352.060. REPORT REGARDING OCCUPATIONAL SKILLS TRAINING FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES.

(a) The commission shall prepare a report that identifies:

(1) potential funding sources for occupational skills training programs for individuals with intellectual and developmental disabilities; and

(2) specific occupations in high-demand industries in this state for which a postsecondary certification, occupational license, or other workforce credential is required and that may be appropriate for individuals with intellectual and developmental disabilities.

(b) Not later than November 1, 2020, the commission shall:

(1) publish the report in a prominent location on the commission's Internet website; and

(2) submit a copy of the report to each legislative standing committee with jurisdiction over workforce development or vocational rehabilitative services.

(c) This section expires September 1, 2021.

Z. Visual Impairment

§300.324 Development, review, and revision of IEP

(a) (2)Consideration of special factors. The IEP Team must--

(iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

TAC §89.1075. General Program Requirements and Local District Procedures.

(b) For school districts providing special education services to students with visual impairments, there must be written procedures as required in the Texas Education Code (TEC), §30.002(c)(10).

TAC §89.1050. The Admission, Review, and Dismissal (ARD) Committee.

(b) For a student from birth through two years of age with visual and/or auditory impairments, an individualized family services plan (IFSP) meeting must be held in place of an ARD committee meeting in accordance with 34 CFR, §§300.320-300.324, and the memorandum of understanding between the Texas Education Agency and the Department of Assistive and Rehabilitative. For students three years of age and older, school districts must develop an IEP.

TAC §89.1055. Content of the Individualized Education Program (IEP).

(d) For students with visual impairments, from birth through 21 years of age, the IEP or individualized family services plan (IFSP) must also meet the requirements of TEC, §30.002(e).

TEC §30.002. Education for Children with Visual Impairments**.**

(a - b) TEA responsibility for a Statewide Plan

SECTION 1. Subsections (b), (c), and (e), Section 30.002, Education Code, are amended to read as follows:

(b) The agency shall:

(1) develop standards and guidelines for all special education services for children with visual impairments that it is authorized to provide or support under this code;

(2) supervise regional education service centers and other entities in assisting school districts in serving children with visual impairments more effectively;

(3) develop and administer special education services for students with both serious visual and auditory impairments;

(4) evaluate special education services provided for children with visual impairments by school districts and approve or impairment;

(5) maintain an effective liaison between special education programs provided for children with visual impairments by school districts and related initiatives of the Department of Assistive and Rehabilitative Services Division for Blind Services, the Department of State Health Services Mental Services Health and Substance Abuse Divison, the Texas School for the Blind and Visually Impaired, and other related programs, agencies, or facilities as appropriate.

(c) The comprehensive statewide plan for the education of children with visual impairments must:

(1) adequately provide for comprehensive diagnosis and evaluation of each school-age child with a serious visual impairment;

(2) include the procedures, format, and content of the individualized education program for each child with a visual impairment;

(3) emphasize providing educational services to children with visual impairments in their home communities whenever possible;

(4) include methods to ensure that children with visual impairments receiving special education services in school districts receive, before being placed in a classroom setting or within a reasonable time after placement:

(A) evaluation of the impairment; and

(B) instruction in an expanded core curriculum, which is required for students with visual impairments to succeed in classroom settings and to derive lasting, practical benefits from the education provided by school districts, including instruction in:

(i) compensatory skills, such as braille and concept development, and other skills needed to access the rest of the curriculum;

(ii) orientation and mobility;

(iii) social interaction skills;

(iv) career planning;

(v) assistive technology, including optical devices;

(vi) independent living skills;

(vii) recreation and leisure enjoyment;

(viii) self-determination; and;

(ix) sensory efficiency

(5) provide for flexibility on the part of school districts to meet the special needs of children with visual impairments through:
(A) specialty staff and resources provided by the district;
(B) contractual arrangements with other qualified public or private agencies;
(C) supportive assistance from regional education service centers or adjacent school districts;
(D) short-term or long-term services through the Texas School for the Blind and Visually Impaired or related facilities or programs; or
(E) other instructional and service arrangements approved by the agency;
(6) include a statewide admission, review, and dismissal process;
(7) provide for effective interaction between the visually impaired child's classroom setting and the child's home environment, including providing for parental training and counseling either by school district staff or by representatives of other organizations directly involved in the development and implementation of the individualized education program for the child;
(8) require the continuing education and professional development of school district staff providing special education services to children with visual impairments;
(9) provide for adequate monitoring and precise evaluation of special education services provided to children with visual impairments through school districts; and
(10) requirethat school districts providing special education services to children with visual impairments develop procedures for assuring that staff assigned to work with the children have prompt and effective access directly to resources available through:
(A) cooperating agencies in the area;
(B) the Texas School for the Blind and Visually Impaired;
(C) the Central Media Depository for specialized instructional materials and aids made specifically for use by students with visual impairments;
(D) sheltered workshops participating in the state program of purchases of blind-made goods and services; and
(E) related sources.

(c-1) To implement Subsection (c)(1) and to determine a child's eligibility for a school district's special education program on the basis of a visual impairment, the full individual and initial evaluation of the student required by Section 29.004 must, in accordance with commissioner rule:
(1) include an orientation and mobility evaluation conducted:
(A) by a person who is appropriately certified as an orientation and mobility specialist, as determined under commissioner rule; and
(B) in a variety of lighting conditions and in a variety of settings, including in the student's home, school, and community and in settings unfamiliar to the student; and
(2) provide for a person who is appropriately certified as an orientation and mobility specialist to participate, as part of a multidisciplinary team, in evalauting data on which the determination of the child's eligibility is based.

(c-2) The scope of any reevaluation by a school district of a student who has been determined, after the full individual and initial evaluation, to be eligible for the district's special education program on the basis of a visual impairment shall be determined, in accordance with 34 C.F.R. Sections 300.122 and 300.303 through 300.311, by a multidisciplinary team that includes, as provided by commissioner rule, a person described by Subsection (c-1)(1)(A).

(d) In developing, administering, and coordinating the statewide plan, the agency shall encourage the use of all pertinent resources, whether those resources exist in special education programs or in closely related programs operated by other public or private agencies, through encouraging the development of shared services arrangement working relationships and by assisting in the development of contractual arrangements between school districts and other organizations. The agency shall discourage interagency competition, overlap, and duplication in the development of specialized resources and the delivery of services.

(e) Each eligible blind or visually impaired student is entitled to receive educational programs according to an individualized education program that:
(1) is developed in accordance with federal and state requirements for providing special education services;
(2) is developed by a committee composed as required by federal law;
(3) reflects that the student has been provided a detailed explanation of the various service resources available to the student in the community and throughout the state;
(4) provides a detailed description of the arrangements made to provide the student with the evaluation and instruction required under Subsection (c)(4); and

(5) sets forth the plans and arrangements made for contacts with and continuing services to the student beyond regular school hours to ensure the student learns the skills and receives the instruction required under Subsection (c)(4)(B).

SECTION 2. Subsection (e), Section 30.002, Education Code, as amended by this Act, applies beginning with the 2013-2014 school year.

(f) In the development of the individualized education program for a ~~[functionally blind]~~ student with a visual impairment, proficiency in ~~[braille]~~ reading and writing is a significant indicator of ~~[presumed to be essential for]~~ the student's satisfactory educational progress. The individualized education program for a student with a visual impairment must include instruction in ~~[Each functionally blind student is entitled to]~~ braille and the use of braille unless the student's admission, review, and dismissal committee determines and documents that braille is not an appropriate literacy medium for the student. The committee's determination must be based on an evaluation of the student's appropriate literacy media and literacy skills and the student's current and future instructional needs ~~[reading and writing instruction that is sufficient to enable the student to communicate with the same level of proficiency as other students of comparable ability who are at the same grade level]~~. Braille instruction:

(1) may be used in combination with other special education services appropriate to the student's educational needs; and

(2) shall be provided by a teacher certified to teach students with visual impairments ~~[. The assessment of each functionally blind student for the purpose of developing the student's individualized education program must include documentation of the student's strengths and weaknesses in braille skills]~~.

(f-1) Each person assisting in the development of the ~~[a functionally blind student's]~~ individualized education program for a student with a visual impairment shall receive information describing the benefits of braille instruction. ~~[Each functionally blind student's individualized education program must specify the appropriate learning medium based on the assessment report and ensure that instruction in braille will be provided by a teacher certified to teach students with visual impairments. For purposes of this subsection, the agency shall determine the criteria for a student to be classified as functionally blind.]~~

SECTION 2. This Act applies beginning with the 2019-2020 school year.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2019.

(g) To facilitate implementation of this section, the commissioner shall develop a system to distribute from the foundation school fund to school districts or regional education service centers a special supplemental allowance for each student with a visual impairment and for each student with a serious visual disability and another medically diagnosed disability of a significantly limiting nature who is receiving special education services through any approved program. The supplemental allowance may be spent only for special services uniquely required by the nature of the student's disabilities and may not be used in lieu of educational funds otherwise available under this code or through state or local appropriations.

Vision Services

The purpose of vision services is to provide a consultation or direct instruction in compensatory vision skills, based on the student's Functional Vision Evaluation/Learning Media Assessment, for students from birth through 22 years with a visual impairment. Students with impaired vision are provided the recommended appropriate learning media, which may include regular textbooks, large print books, brailed books, audio media, and materials from American Printing House for the Blind (APH). Students meeting eligibility requirements are registered with TEA as Visually Impaired or Deaf-Blind on the annual VI registration. Students evaluated and determined eligible will receive Orientation & Mobility (O & M) instruction as a related service.

https://hhs.texas.gov/services/disability/blind-visually-impaired

II. TEACHER ACCESSIBILITY AND INPUT

§300.323 When IEPs must be in effect.

(d) Accessibility of child's IEP to teachers and others. Each public agency must ensure that-

(1) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and other service provider who is responsible for its implementation; and

(2) Each teacher and provider described in paragraph (d)(1) of this section is informed of –

(i) His or her specific responsibilities related to implementing the child's IEP; and

(ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

§300.324 Development, review, and revision of IEP

(a) (3) Requirement with respect to regular education teacher. A regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of--

(i) Appropriate positive behavioral interventions and supports and other strategies for the child; and

(ii) Supplementary aids and services, program modifications, and support for school personnel consistent with §300.320(a)(4).

(b) Review and revision of IEPs.

(2) Requirement with respect to regular education teacher. A regular education teacher of the child, as a member of the IEP Team, must, consistent with paragraph §300.324(a)(3) of this section, participate in the review and revision of the IEP of the child.

TEC § 29.001. Statewide Plan. The TEA shall develop and implement a statewide plan with programmatic content that includes procedures designed to:

(11) ensure that each district develops a process to be used by a teacher who instructs a student with a disability in a regular classroom setting:

(A) to request a review of the student's individualized education program;

(B) to provide input in the development of the student's individualized education program;

(C) that provides for a timely district response to the teacher's request; and

(d) that provides for notification to the student's parent or legal guardian of that response.

§89.1075.General Program Requirements and Local District Procedures.

(a) Each school district must maintain an eligibility folder for each student receiving special education services, in addition to the student's cumulative record. The eligibility folder must include, but need not be limited to: copies of referral data; documentation of notices and consents; evaluation reports and supporting data; admission, review, and dismissal (ARD) committee reports; and the student's individualized education programs (IEPs).

(b) For school districts providing special education services to students with visual impairments, there must be written procedures as required in the Texas Education Code (TEC), §30.002(c)(10).

(c) Each school district must ensure that each teacher who provides instruction to a student with disabilities:

(1) has access to relevant sections of the student's current IEP;

(2) is informed of the teacher's specific responsibilities related to implementation of the IEP, such as goals and objectives, and of needed accommodations, modifications, and supports for the student; and

(3) has an opportunity to request assistance regarding implementation of the student's IEP.

(d) Each school district must develop a process to be used by a teacher who instructs a student with a disability in a regular classroom setting:

(1) to request a review of the student's IEP;

(2) to provide input in the development of the student's IEP;

(3) (2) that provides for a timely district response to the teacher's request; and

(4) ~~(3)~~ that provides for notification to the student's parent or legal guardian of that response.

(e) Students with disabilities must have available an instructional day commensurate with that of students without disabilities. The ARD committee must determine the appropriate instructional setting and length of day for each student, and these must be specified in the student's IEP.

Opportunity for General Education Teachers to Request Assistance:

The immediate person for support to the general education teacher is the campus special education teacher. Special educators are in a collaborative role to problem solve any difficulties the special education student may be having in the general class. The ARD/IEP form designates a person responsible for coordination of monitoring the student and this is typically assigned to the special education teacher. Special Education teacher responsibilities to ensure participation of the general education teacher include:

A. sending a memo/form to inform the teachers of your planning period and request some time to discuss the special education students in their room,

B. providing relevant sections of the student's current IEP, such as goals and objectives, accommodations, and adaptations to all teachers that provide instruction to a student with disabilities,

C. offering conferences before or after school to discuss the current or proposed IEP of specific students... conferences may be used to discuss grading, homework; clarify student abilities and needs based on evaluation; discuss test accommodations for the teacher to use; or to suggest a behavioral strategy that may work for the student or review the behavioral intervention plan, if appropriate; etc.

D. special education teacher must inform the parent or guardian of any request by a general education teacher to review the IEP and the results of that discussion if a formal IEP meeting is not held.

E. If the discussion with the general educator and subsequent actions do NOT result in an IEP meeting, the special education teacher will contact the parent/guardian to share and discuss issues and document the conversation on "Phone/Meeting Contact Log" located in the student folder. Routine teacher contact regarding student progress is not the type of discussion needing parent contact and "Log" documentation. If in doubt, contact your supervisor for additional instruction/support.

Opportunity to Provide Input to the ARD committee :

The general education teacher will have information regarding the special education teacher's conference time and should use this time or after school conferences as one means to provide input regarding the student's IEP. General education and special education teachers may collaborate , however, the special education teacher ***MUST*** *send out the ARD/IEP committee teacher input form to all the student's teachers prior to:*

A. an initial ARD/IEP committee meeting,

B. an ARD/IEP meeting to consider existing evaluation data / reevaluation,

C. annual review ARD/IEP meeting, or

D. an ARD/IEP meeting considering other areas such as behavior, failures, etc..

Process for Submitting Requests for Further Consideration of Student's IEP - General Education Teacher :

A. There may be instances when the general educator does not agree with the decision of the ARD/IEP committee. There could be several reasons why this might occur, however, it is the responsibility of special educators first and foremost to support and assist the general education teacher in understanding the student's disability and IEP. When a general education teacher does not agree, the special education teacher should:

1. make an appointment with the general education teacher to discuss the general education teacher's concern;

2. listen carefully to each issue raised by the general education teacher, be sure he/she has a clear understanding of the student's educational competencies and needs. Often the general education teacher with a concern is not present in the ARD/IEP committee meeting and has not seen the evaluation information and may not understand the student's strengths and weaknesses.

3. collaboratively brainstorm possible solutions and alternatives which could be used, being careful to pay close attention to the ARD/IEP committee decisions on placement, accommodations, etc. Areas for support include pacing, methods, materials, etc.

4. keep notes of the issues and solutions to be tried and the person responsible for trying each solution, and the timeline;

5. set the next date and time to get together to discuss any progress toward the general education teachers concern after he/she has implemented the solutions from the meeting. The special education teacher should always follow-up. Possible ways special education could support the general education teacher are listed above. Don't hesitate to offer specific suggestions as ways to help the teacher.

** Progress should be noted and concerns resolved no more that two weeks from your first meeting date.*

B. Involvement of the Principal: If steps above do not improve the situation, the Principal or Assistant Principal should be notified (if they have not already been involved). The following steps should be followed if a

solution did not occur:

1. *The special education teacher should inform the administrator of the steps taken above.*
2. *The administrator will determine any further resources to involve in resolving the situation. The diagnostician, coordinator, or special education director may be included in problem solving.*
3. *The administrator may call a meeting with the parties involved or may offer suggestions to the general education teacher, or may determine an ARD/IEP meeting is necessary to address the issues.*
4. *At any time during the process above, an ARD/IEP committee meeting may be requested by the Principal if determined necessary.*

Process for Submitting Requests for Further Consideration of Student's IEP - Special Education Teacher :

A. Involvement of the Principal: If the special education teacher determines appropriate, submit requests for further consideration of the student's IEP to the Principal or Assistant Principal.

B. The following steps should be followed if a solution did not occur:

1. *The special education teacher should inform the administrator of the considerations regarding the IEP.*
2. *The administrator will determine any further resources to involve in resolving the situation. The diagnostician, coordinator, or special education director may be included in problem solving.*
3. *The administrator may call a meeting with the parties involved or may offer suggestions to the special education teacher, or may determine an ARD/IEP meeting is necessary to address the issues.*

III. SPECIAL EDUCATION TEACHER/SERVICE PROVIDER RESPONSIBILITIES

The special education teacher is responsible for development of appropriate goals and objectives as well as ongoing progress monitoring and documentation. Additional guidance information on standards-based IEP goals and objectives can be located on the TEA website.

The draft IEP goals and objectives proposed should be sent home one week prior to the IEP meeting. This is not to be confused with a "draft IEP" document.

The WCSESSA staff will come to the IEP meeting prepared to discuss findings and preliminary recommendations for the IEP. This preparation may or may not include a complete "draft IEP". If the staff prepared a "draft IEP", the staff will make it perfectly clear to the parents at the outset of the meeting that the services proposed are preliminary recommendations for review and discussion with the parents. If there is a draft developed, the parents will also have been provided a copy of the "draft IEP" in advance of the IEP meeting in order to review prepare questions.

A. Initial ARD/IEP Meeting.

The special education teacher responsibilities in the IEP process are to:

1. *complete the draft IEP measurable annual goals, based on appropriate evaluation of present levels of performance, benchmark testing, previous state testing, etc., selecting a minimum of one goal and two objectives for each subject or developmental area anticipated; (remember the general education teacher(s) to the extent appropriate, should participate in the development, review, and revision of the student's IEP), (objectives are required only if student is taking an off grade level state assessment)*
2. *complete the draft IEP by writing in any individualized items needed:*
   a. *complete header information marking DRAFT IEP,*
   b. *complete proposed evaluation procedures, and criteria.*
3. *send draft IEP goals/objectives to the parent at least one week prior to ARD/IEP meeting;*
4. *write the date the IEP is accepted by ARD/IEP committee on the IEP during the ARD.*
5. *make copies of the accepted IEP goals and objectives.*
   a. *One copy is to be filed in the student eligibility folder with the completed ARD/IEP forms, and*
   b. *additional copies of the approved IEP will be distributed to the parent and if necessary, other staff members working with the student.*
      (1) *ensure general education teachers have access to relevant portions of the IEP at any time. Explain how to access relevant portions of the IEP such as goals and benchmarks, needed accommodations, behavioral and other supports needed for the list of special education students they instruct. Access to relevant sections may be offered through viewing the special education teachers' printed copy of the IEP; or viewing the student eligibility folder if located on the campus; or making a copy of the relevant sections of the IEP; or logging into the district IEP system if access is available.*
      (2) *In order to document above, obtain signed documentation from the general education teachers that access to relevant portions of the IEP was provided.*
   c. *assist general education teachers who are involved in the student's instruction to maintain documentation that they are modifying and/or accommodating educational programs of students as specified in the ARD/IEP.*
6. *The special education teacher's copy is used to document progress in the same timely manner as students on your campus who are nondisabled. (ex. every 6 weeks).*

B. Annual

1. *Each student's individual educational program (IEP) will be reviewed within 12 months to determine the student's progress, the student's continued need for special education and related services, and the need*

for modifying the plan. The ARD/IEP committee may schedule an earlier review date if needed for review, modification, failure, etc.

a. in addition to presenting the new draft IEP goals and objectives,
b. submit the original IEP with progress documentation marked on the IEP, and
c. follow #1 through # 6 in A. above.

2. *At the annual review, the current IEP objectives will be reviewed and documented on the IEP prior to the development and acceptance of a new IEP.*
   a. There should be some objectives that have been added/deleted/revised on the new IEP.
   b. If there are no changes, the ARD/IEP committee should have written justification for the lack of revision and lack of a new IEP generated. This cannot be a reoccurring event. You would be documenting that no learning has taken place in one year. The goals and objectives must be written to measure and document even the smallest of gains or progress. If necessary, a task analysis should be done to develop objectives that are measureable.
3. *IEP's will also be reviewed and documented at the beginning of the year and after breaks in the program for regression/recoupment information necessary to discuss the need for ESY.*
4. *Also, progress on the IEP is documented in the same timely manner as other non-disabled students and reported to parents.*
5. *Document in the teacher grade book the date that progress reports have been sent.*

C. Brief/Revision ARD

Recommendations for changes in the individual educational program (IEP), including changes in the student's placement, will be made to the ARD/IEP committee until further guidance from the TEA. Revisions in the student's IEP which need ARD/IEP committee action may include, but not be limited to:

1. *any lack of expected progress toward the annual goals and in the general curriculum, if appropriate,*
2. *the results of any reevaluation conducted ,*
3. *information about the student provided to, or by, the parents,*
4. *the student's anticipated needs, or*
5. *other matters including but not limited to:*
   a. when a student with disabilities fails;
   b. assigning a student to a classroom to receive instruction in a different curriculum area (i.e. reading comprehension, math calculation, etc.) than was designated by the last ARD/IEP committee;
   c. any addition or deletion of a related service;
   d. adding new objectives when all of the goals and objectives have been met;
   e. any change in schedule which would change the instructional arrangement, or for high school students-the graduation plan;
   f. when the teacher feels the IEP is not appropriate to the student's need.

All disciplinary actions regarding student with disabilities will be in accordance with federal requirements and TEC Chapter 37, Subchapter A. The ARD/IEP committee will determine the instructional and related services to be provided during the time of expulsion. The student's IEP will include goals and objectives designed to assist in returning the student to school and preventing significant regression.

D. Transfer ARD

The special education teacher will be responsible for attending any temporary ARD meetings as necessary and working with the campus diagnostician/appraisal staff to plan the draft IEP for the temporary transfer student. Assist in obtaining records from the previous district and conducting any benchmark or released STAAR testing as appropriate.

For specifics on Transfer ARDs, see Section **4a.X.**

E. Standards-based IEP Development

http://www.esc20.net/default.aspx?name=ci_se.agc.OnlineTraining

A standards-based IEP is a process in which the IEP team has incorporated state content standards in its development of goals aligned with, and chosen to facilitate the student's achievement of, state grade-level

academic standards. Many professionals and family members view standards-based IEPs as a best practice to create high expectations for students with disabilities. Many of the questions below are the responsibility of the student's special education teacher(s) in collaboration with the general education teachers.

Steps to Creating a Standards-based IEP

These steps are adapted from the Alabama Department of Education.

Step 1: Consider the grade-level content standards for the grade in which the student is enrolled or would be enrolled based on age.

- *What is the intent of the content standard?*
- *What is the content standard saying that the student must know and be able to do?*

Step 2: Examine classroom and student data to determine where the student is functioning in relation to the grade-level standards.

- *Has the student been taught content aligned with grade-level standards?*
- *Has the student been provided appropriate instructional scaffolding to attain grade-level expectations?*
- *Were the lessons and teaching materials used to teach the student aligned with state grade-level standards?*
- *Was the instruction evidence-based?*

Step 3: Develop the present level of academic achievement and functional performance.

Describe the individual strengths and needs of the student in relation to accessing and mastering the general curriculum.

- *What do we know about the student's response to academic instruction (e.g., progress monitoring data)?*
- *What programs, accommodations (i.e ., classroom and testing) and/or interventions have been successful with the student?*
- *What have we learned from previous IEPs and student data that can inform decision making?*
- *Are there assessment data (i.e., state, district and/or classroom) that can provide useful information for making decisions about the student's strengths and needs (e.g., patterns in the data)?*

Consider the factors related to the student's disability and how they affect how the student learns and demonstrates what he or she knows.

- *How does the student's disability affect participation and progress in the general curriculum?*
- *What supports does the student need to learn the knowledge and attain the skills to progress in the general curriculum?*
- *Is the student on track to achieve grade-level proficiency?*

Step 4: Develop measurable annual goals aligned with grade-level academic content standards.

- *What are the student's needs as identified in the present level of performance?*
- *Does the goal have a specific timeframe?*
- *What can the student reasonably be expected to accomplish in one school year?*
- *Are the conditions for meeting the goal addressed?*
- *How will the outcome of the goal be measured? Be specific/concrete using measures such as _ 7 _ of _ 10 _ trials for mastery.*

Step 5: Assess and report the student's progress throughout the year.

- *How does the student demonstrate what he/she knows on classroom, district and state assessments?*
- *Are a variety of assessments used to measure progress?*
- *How will progress be reported to parents?*

Step 6: Identify specially designed instruction including accommodations and/or modifications needed to access and progress in the general education curriculum.

- *What allowable accommodations are needed to enable the student to access the knowledge in the general education curriculum?*
- *What accommodations have been used with the student and were they effective?*
- *Has the complexity of the material changed in such a way that the content has been modified?*

Step 7: Determine the most appropriate assessment option.

- *What types of assessments are offered for the grade level? STAAR, etc.*

- *What types of responses do different assessments require?*
- *What are the administrative conditions of the assessment? (i.e., setting, delivery of instructions, time allotted, etc.)*
- *What accommodations are allowed on the assessment(s)?*
- *Are the accommodations approved for the assessment also used in the classroom? They must be or they cannot be allowed on the state assessment.*
- *Has the student received standards-based, grade-level instruction?*
- *Was the instruction evidence based?*
- *What is the student's instructional level?*
- *How different is the student's instructional level from the level of typical peers?*
- *Can the student make progress toward grade-level standards in the same timeframe as typical peers? (If no, consider modified academic achievement standards)*
- *What can be learned from the student's previous state assessment results?*
- *Can the student demonstrate what he/she knows on the assessment option under consideration?*

Section 4c. - RELATED SERVICES
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Section 4c. - RELATED SERVICES

I. DEFINITIONS

TEC §29.002. Definitions. In this subchapter, "special services" means:
(1) special education instruction, which may be provided by professional and supported by paraprofessional personnel in the regular classroom or in an instructional arrangement described by Section 42.151; and
(2) related services, which are developmental, corrective, supportive, or evaluative services, not instructional in nature, that may be required for the student to benefit from special education instruction and for implementation of a student's individualized education program.

The Wood County SSA will follow all evaluation criteria in the FIE and Disability sections for appropriate related service assessments and reports. Also, ARD/IEP criteria will be followed for related services.

What are direct services?
Direct services usually refer to hands-on, face-to-face interactions between the related services professional and the student. These interactions can take place in a variety of settings, such as the classroom, gym, health office, resource room, counseling office, or playground. Typically, the related service professional analyzes student responses and uses specific techniques to develop or improve particular skills. The professional will also typically: monitor the student's performance within the educational setting so that adjustments can be made to improve student performance, as needed, and consult with teachers, administrators and parents on an ongoing basis, so that relevant strategies can be carried out through indirect means at other times.

What are indirect services?
Indirect services may involve teaching, consulting with, and/or directly supervising other personnel (including paraprofessionals and parents) so that they can carry out therapeutically-appropriate activities. For example, a school psychologist might train teachers and other educators how to implement a program included in a student's IEP to decrease the child's problem behaviors. Similarly, a physical therapist may serve as a consultant to a teacher and provide expertise to solve problems regarding a student's access to instruction.

II. REGULATIONS

§300.8 Child with a disability.

(a) General.

(1) Child with a disability means a child evaluated in accordance with §§300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as emotional disturbance) , an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

(2) (i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.

(ii) If, consistent with §300.38(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

§300.34 Related services.

(a) General. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also includes school health services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the IEP of the child, social work services in schools, and parent counseling and training.

(b) Exception; services that apply to children with surgically implanted devices, including cochlear implants.

(1) Related services do not include a medical device that is surgically implanted, the optimization of device functioning (e.g., mapping), maintenance of the device, or the replacement of that device.

(2) Nothing in paragraph (b)(1) of this section—

(i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP Team to be necessary for the child to receive FAPE.

(ii) Limits the responsibility of WCSESSA to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or

(iii) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in §300.113(b).

(c) Individual related services terms defined. The terms used in this definition are defined as follows:

(1) Audiology includes--

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and

(vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

Counseling services are provided to assist a child with a disability to benefit from special education. Parent counseling and training includes assisting parents in understanding the special needs of their child; providing information about child development; and helping parents acquire the skills necessary to allow them to support the implementation of their child's IEP or IFSP.

(3) Early identification and assessment of disabilities in children means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

In-Home Training

In-home training is the result of findings by the State of Texas that many individuals with autism/P.D.D. experience difficulty generalizing social/behavioral skills from one setting to another. In-home training is a supplemental/related service for students with autism/P.D.D. that involves working directly with the student and/or providing strategies for a variety of non-school settings including home or community to help them generalize social/behavioral skills. A referral should be made to determine skills to generalize through in-home training; which can be derived from a request from a parent, guardian, teacher or other member(s) of an ARDC. Once the referral is made, an in-home training needs assessment should be conducted. This assessment should involve an interview with the parent or guardian, observation of the student and interview(s) with teacher(s), review of other data including current IEPs to determine mastered or near mastered goals and objectives for determination of skills to generalize. Parents, or a district approved designee, are required to participate in In-Home Training sessions in order to be equipped and implement generalization of ARD Committee determined goals.

This service may be implemented by the same - or different - service providers (in-home trainers/ parent trainers). Service providers are determined by district personnel but should be knowledgeable of the unique needs of students with autism/P.D.D.

(4) Interpreting services means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(i) The following when used with respect to children who are deaf or hard of hearing: oral transliteration services, cued language transliteration services, and sign language transliteration and interpreting services and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and

(ii) Special interpreting services for children who are deaf-blind.

(5) Medical services means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(6) Occupational therapy means--

(i) Services provided by a qualified occupational therapist; and

(ii) Includes--

(A) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;

(B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(C) Preventing, through early intervention, initial or further impairment or loss of function.

The primary function is to directly assist the student to benefit from instruction. Occupational and physical therapy services will be provided when a disability adversely affects the educational performance. The therapist will aid the student to develop, increase, improve, and maintain skills that are prerequisites for the student to function within his educational environment. For referral information see also Section 1.

Medical Requirement

OT/PT Physician's Referral Form. (This form must be completed and signed by a physician. This form is required before any PT services can be implemented. ***Implementation of some OT services may require this form.*** *).*

Occupational and Physical Therapy Services

The following are key considerations for the delivery of OT and PT services in the public school setting. These considerations are based on research and guidance from leading experts in the practice of therapy services in school systems:

1. *Services are provided to enable the student to benefit from his or her special education program and facilitate access to the general curriculum.*
   - *Strategies should be integrated into the classroom and school environment to support learning of curriculum content.*
   - *Interventions should support skills that are needed for graduation with a diploma.*
2. *Services are provided in the student's daily educational routine.*
   - *Skills are taught across all educational settings.*
   - *Therapeutic activities occur throughout the school day and often are implemented by instructional staff in collaboration with the therapist.*
   - *Skills must be taught in naturally occurring environments.*
   - *Skills must be generalized across different school settings, not isolated solely with the therapist in a separate area.*
3. *Services are provided through a team approach.*
   - *Team members share information, strategies, and techniques to assure continuity of services.*
   - *Educational strategies and interventions are developed and implemented jointly by the IEP team members including the student when appropriate.*
   - *Regular team meetings provide the communication of information and outcomes that guide the plan of activities and instruction that occurs throughout the day in the classroom, home and community.*

Occupational and Physical Therapy Service Delivery Options

Services are provided through the use of a variety of delivery models.

- *Service delivery models include monitoring, consulting and working directly with the student.*
- *Effective therapy services generally include a combination of models to meet the unique needs of each student.*
- *Effective therapy services include the following:*
- *Training parents and school staff in activities and accommodations to be implemented throughout the student's day*
- *Observing and critically analyzing student performance and responses that prevent the student from benefiting from his or her educational program*
- *Identifying, selecting, and adapting special materials and equipment*
- *Collaborating and coordinating with teacher and families for needed changes in instruction and in the learning environment*
- *Consulting with students, parents and school staff.*

A student's need for OT and/or PT services may vary over time.

- *Student therapy needs differ in intensity and in focus during the students' school year/s.*
- *These fluctuations are reflected in the IEP and should be fluid and flexible, based on the immediate educational needs at any time during the student's course of study.*

Discontinuation Of Occupational and/or Physical Therapy Services Will Occur:
Upon ARD/IEP committee discussion of current evaluation (formal and/or informal) and recommendation that OT/PT services are no longer required due to one or more of the following:

- *The student has accomplished the goals targeted in the IEP (Individual Educational Program);*
- *The student has achieved the maximum benefit from occupational and/or physical therapy;*
- *The student's physical dysfunction does not negatively affect his/her educational program;*
- *The student maintains progress and no evidence of change is seen;*
- *The intervention will not impact the educational success of the student.*

OT Handbook of Rules and FAQ *Link to all OT Rules:*
http://www.ptot.texas.gov/images/pdfs/ot/2012_TBOTERules.pdf

TAC §372.1 OT Provision of Services

(a) The occupational therapist is responsible for determining whether any aspect of the provision of services may be conducted via telehealth or must be conducted in person.

(a) Medical Conditions.

(1) Occupational therapists may provide consultation or monitored services, or screen or evaluate the client to determine the need for occupational therapy services without a referral. However, a referral must be requested at any time during the evaluation process when necessary to ensure the safety and welfare of the client.

(2) The initial evaluation for a medical condition must be conducted in person and may not be conducted via telehealth.

(c) Non-Medical Conditions.

(1) Consultation, monitored services, screening, and evaluation for need of services may be provided without a referral.

(2) Non-medical conditions do not require a referral. However, a referral must be requested at any time during the evaluation or intervention process when necessary to ensure the safety and welfare of the client.

(d) Methods of Referral. The referral must be from a licensed referral source in accordance with the Practice Act, §454.213 (relating to Accepted Practice; Practitioner's Referral), and may be transmitted in the following ways:

(1) in a written document, including faxed and emailed documents; or

(2) verbally, either in person or by electronic information/communications technologies. If a referral is transmitted verbally, it must be documented by the authorized personnel who receives the referral. In this section, "authorized personnel" means staff members authorized by the employer or occupational therapist to receive referrals transmitted verbally.

(e) Screening, Consultation, and Monitored Services. A screening, consultation, or monitored services may be performed by an occupational therapy practitioner.

(f) Evaluation.

(1) Only an occupational therapist may perform an initial evaluation or any re-evaluations.

(2) An occupational therapy plan of care must be based on an occupational therapy evaluation.

(3) The occupational therapist must have real time interaction with the client during the evaluation process either in person or via telehealth.

(4) The occupational therapist may delegate to an occupational therapy assistant or temporary licensee the collection of data for the assessment. The occupational therapist is responsible for the accuracy of the data collected by the assistant.

(g) Plan of Care.

(1) Only an occupational therapist may initiate, develop, modify or complete an occupational therapy plan of care. It is a violation of the OT Practice Act for anyone other than the evaluating or treating occupational therapist to dictate, or attempt to dictate, when occupational therapy services should or should not be provided, the nature and frequency of services that are provided, when the client should be discharged, or any other aspect of the provision of occupational therapy as set out in the OT Act and Rules.

(2) The occupational therapist and an occupational therapy assistant may work jointly to revise the short-term goals, but the final determination resides with the occupational therapist. Revisions to the plan of care and goals must be documented by the occupational therapist and/or occupational therapy assistant to reflect revisions at the time of the change.

(3) An occupational therapy plan of care may be integrated into an interdisciplinary plan of care, but the occupational therapy goals or objectives must be easily identifiable in the plan of care.

(4) Only occupational therapy practitioners may implement the written plan of care once it is completed by the occupational therapist.

(5) Only the occupational therapy practitioner may train non-licensed personnel or family members to carry out specific tasks that support the occupational therapy plan of care.

(6) The occupational therapist is responsible for determining whether intervention is needed and if a referral is required for occupational therapy intervention.

(7) The occupational therapy practitioners must have real time interaction with the client during the intervention process either in person or via telehealth.

(8) Devices that are in sustained skin contact with the client (including but not limited to wheelchair positioning devices, splints, hot/cold packs, and therapeutic tape) require the on-site and attending presence of the occupational therapy practitioner for any initial applications. The occupational therapy practitioner is responsible for determining the need to be on-site and attending for subsequent applications or modifications.

(9) Except where otherwise restricted by rule, the supervising occupational therapist may only delegate to an occupational therapy assistant or temporary licensee tasks that they both agree are within the competency level of that occupational therapy assistant or temporary licensee.

(h) Documentation.

(1) The client's records include the medical referral, if required, and the plan of care. The plan of care includes the initial examination and evaluation; the goals and any updates or change of the goals; the documentation of each intervention session by the OT or OTA providing the service; progress notes and any re-evaluations, if required; any written communication; and the discharge documentation.

(2) The licensee providing occupational therapy services must document for each intervention session. The documentation must accurately reflect the intervention, decline of intervention, and/or modalities provided.

(3) The occupational therapy assistant must include the name of a supervising OT in each intervention note. This may not necessarily be the occupational therapist who wrote the plan of care, but an occupational therapist who is readily available to answer questions about the client's intervention at the time of the provision of services. If this requirement is not met, the occupational therapy assistant may not provide services.

(i) Discharge.

(1) Only an occupational therapist has the authority to discharge clients from occupational therapy services. The discharge is based on whether the client has achieved predetermined goals, has achieved maximum benefit from occupational therapy services, or when other circumstances warrant discontinuation of occupational therapy services.

(2) The occupational therapist must review any information from the occupational therapy assistant(s), determine if goals were met or not, complete and sign the discharge documentation, and/or make recommendations for any further needs of the client in another continuum of care.

Source Note: The provisions of this §372.1 amended to be effective March 1, 2017, 42 TexReg 696.

TAC §372.2. General Purpose Occupation-based Instruction

(a) Occupational therapy practitioners may develop or facilitate general purpose, occupation-based groups or classes including but not limited to handwriting groups, parent-child education classes, wellness-focused activities for facility residents, aquatics exercise groups, and cooking for diabetics classes.

(b) These services do not require individualized evaluation and plan of care services but practitioners may develop goals or curriculums for the group as a whole. If a participant requires individualized occupational therapy services, these may only be provided in accordance with §372.1 of this title (relating to Provision of Services).

(c) Supervision requirements for services provided pursuant to this section shall be completed in accordance with §373.3 of this title (relating to Supervision of an Occupational Therapy Assistant).

(d) When general purpose occupation-based instruction is being provided pursuant to §372.2, the OT must approve the curricular goals/program prior to the OTA's initiating instruction.

TAC §362.1 Occupational Therapy *http://www.ptot.texas.gov/images/pdfs/ot/2012_TBOTERules.pdf*

(28)Occupational Therapist (OT)--An individual who holds a valid regular or provisional license to practice or represent self as an Occupational Therapist in Texas. This definition includes an Occupational Therapist or one who is designated as an Occupational Therapist, Registered (OTR®).

(29)Occupational Therapist, Registered (OTR®)--An individual who uses this term must hold a valid regular or provisional license to practice or represent self as an Occupational Therapist in Texas by maintaining registration through NBCOT.

(30)Occupational Therapy Assistant (OTA)--An individual who holds a valid regular or provisional license to practice or represent self as an Occupational Therapy Assistant in Texas, and who is required to be under the continuing supervision of an OT. This definition includes an individual who is designated as a Certified Occupational Therapy Assistant (COTA®) or an Occupational Therapy Assistant (OTA).

(31)Occupational Therapy Plan of Care--A written statement of the planned course of Occupational Therapy intervention for a client. It must include goals, objectives and/or strategies, recommended frequency and duration, and may also include methodologies and/or recommended activities.

(32)Occupational Therapy Practice--Includes:

(A)Methods or strategies selected to direct the process of interventions such as:

(i) Establishment, remediation, or restoration of a skill or ability that has not yet developed or is impaired.

(ii) Compensation, modification, or adaptation of activity or environment to enhance performance.

(iii) Maintenance and enhancement of capabilities without which performance in everyday life activities would decline.

(iv) Health promotion and wellness to enable or enhance performance in everyday life activities.
(v) Prevention of barriers to performance, including disability prevention.

(B) Evaluation of factors affecting activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:
(i) Client factors, including body functions (such as neuromuscular, sensory, visual, perceptual, cognitive) and body structures (such as cardiovascular, digestive, integumentary, genitourinary systems).
(ii) Habits, routines, roles and behavior patterns
(iii) Cultural, physical, environmental, social, and spiritual contexts and activity demands that affect performance.
(iv) Performance skills, including motor, process, and communication/interaction skills.

(C) Interventions and procedures to promote or enhance safety and performance in activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:
(i) Therapeutic use of occupations, exercises, and activities.
(ii) Training in self-care, self-management, home management and community/work reintegration.
(iii) Development, remediation, or compensation of physical, cognitive, neuromuscular, sensory functions and behavioral skills.
(iv) Therapeutic use of self, including one's personality, insights, perceptions, and judgments, as part of the therapeutic process.
(v) Education and training of individuals, including family members, caregivers, and others.
(vi) Care coordination, case management and transition services.
(vii) Consultative services to groups, programs, organizations, or communities.
(viii) Modification of environments (home, work, school, or community) and adaptation of processes, including the application of ergonomic principles.
(ix) Assessment, design, fabrication, application, fitting and training in assistive technology, adaptive devices, and orthotic devices, and training in the use of prosthetic devices.
(x) Assessment, recommendation, and training in techniques to enhance functional mobility including wheelchair management.
(xi) Driver rehabilitation and community mobility.
(xii) Management of feeding, eating, and swallowing to enable eating and feeding performance.
(xiii)Application of physical agent modalities, and use of a range of specific therapeutic procedures (such as wound care management; techniques to enhance sensory, perceptual, and cognitive processing; manual therapy techniques) to enhance performance skills.

(32) Occupational Therapy Practice--includes:

(33)Occupational Therapy Practitioners--Occupational Therapists and Occupational Therapy Assistants licensed by this Board.

(7) <u>Orientation and mobility services</u> —

(i) Means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and

(ii) Includes teaching students the following, as appropriate:

(A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

(B) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;

(C) To understand and use remaining vision and distance low vision aids; and

(D) Other concepts, techniques, and tools.

Also see S3. Disability - Visual Impairment.

A service animal may be necessary to assist the blind or visually impaired student to safely travel which is part of the specialized instruction due to the disability. The IEP committee will address this need. (more service animal information on the following pages)

(8) (i) <u>Parent counseling and training</u> means assisting parents in understanding the special needs of their child;

(ii) Providing parents with information about child development; and

(iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.
Parent training is a separate service designed to help parents and families of students with such disabilities as autism/P.D.D. gain knowledge of the unique needs of their children who Parent training may include information regarding community services, workshops, videos, conferences, and/or materials.

(9) Physical therapy means services provided by a qualified physical therapist. (see also (6) Occupational Therapy)

Obtaining medical (current within one year)?

1. *When a medical is required, the WCSESSA will notify the parent of this need 2 months prior. The parent's assistance will be requested in obtaining information from the student's physician.*
2. *The WCSESSA will work with the parents to ensure all necessary information is obtained prior to the due date.*
3. *If the parent is unable to obtain necessary medical information from the student's physician, the WCSESSA will assist the parent in identifying another physician, or obtain parental Consent to Release of Information for the school to work directly with the physician to obtain the medical.*
4. *If a prescription is not current within one year and therapist licensing requires a current prescription on file for services to occur, an ARD committee will be convened to design the nature of the services to be provided in the absence of a current medical / prescription.*
5. *The WCSESSA will continue to work collaboratively with the parents to obtain a current medical so services may continue.*

TAC §22.16.322.1. Provision of Services - PT *http://www.ptot.texas.gov/images/pdfs/pt/PTrules_2013.06.pdf*

(a) Initiation of physical therapy services.

(1) Referral requirement. A physical therapist is subject to discipline from the board for providing physical therapy treatment without a referral from a qualified healthcare practitioner licensed by the appropriate licensing board, who within the scope of the professional licensure is authorized to prescribe treatment of individuals. The list of qualifying referral sources includes physicians, dentists, chiropractors, podiatrists, physician assistants, and advanced nurse practitioners.

(2) Exceptions to referral requirement.

(A) A PT may evaluate without referral.

(B) A PT may provide instructions to any person who is asymptomatic relating to the instructions being given without a referral, including instruction to promote health, wellness, and fitness.

(C) Emergency Circumstances. A PT may provide emergency medical care to a person after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity without referral if the absence of immediate medical attention could reasonably be expected to result in a serious threat to the patient's health, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

(D) Prior referrals. A physical therapist may treat a patient for an injury or condition that is the subject of a prior referral if all of the following conditions are met.

(i) The physical therapist must notify the original referring healthcare personnel of the commencement of therapy by telephone within five days, or by letter postmarked within five business days;

(ii) The physical therapy provided must not be for more than 20 treatment sessions or 30 consecutive calendar days, whichever occurs first. At the conclusion of this time or treatment, the physical therapist must confer with the referring healthcare personnel before continuing treatment.

(iii) The treatment can only be provided to a client/patient who received the referral not more than one year previously.

(iv) The physical therapist providing treatment must have been licensed for one year. The physical therapist responsible for the treatment of the patient may delegate appropriate duties to another physical therapist having less than one year of experience or to a physical therapist assistant. A physical therapist licensed for more than one year must retain responsibility for and supervision of the treatment.

(3) Methods of referral. A referral may be transmitted by a qualifying referral source in the following ways:

(A) in a written document, including faxed or emailed documents; or

(B) verbally, in person or by telephone. If a referral is transmitted verbally, whether in person or by telephone, it must be received, recorded and signed by the PT, PTA or other authorized personnel, and

include all of the information that would appear on a written referral.

(b) Evaluation and screening.

(1) Evaluation. Physical therapy treatment may not be provided prior to the completion of an evaluation of the patient's condition by a PT.

(2) PTAs may screen patients designated by a PT as possible candidates for physical therapy services. Screening entails the collection of uniform information from all patients screened using a predetermined, standardized format. The information collected is delivered to the supervising PT. Only a PT may determine whether further intervention for patients screened is necessary.

(c) Physical therapy plan of care development and implementation.

(1) The PT must develop a written plan of care, based on his evaluation, for each patient.

(2) Treatment may not be provided by a PTA or aide until the plan of care has been established.

(3) The plan of care must be reviewed and updated as necessary following a reevaluation of the patient's condition.

(4) The plan of care or treatment goals may only be changed or modified by a PT.

(5) A PTA may modify treatment techniques as indicated in the plan of care.

(6) A PT or PTA must interact with the patient regarding his/her condition, progress and/or achievement of goals during each treatment session.

(d) Reevaluation.

(1) Provision of physical therapy treatment by a PTA or an aide may not continue if the PT has not performed a reevaluation:

(A) at a minimum of once every 60 days after treatment is initiated, or at a higher frequency as established by the PT; and

(B) In response to a change in the patient's medical status that affects physical therapy treatment, when a change in the physical therapy plan of care is needed, or prior to any planned discharge.

(2) A reevaluation must include:

(A) ~~Direct physical therapist-to-patient interaction;~~ An onsite reexamination of the patient; and

(B) A review of the plan of care with appropriate continuation, revision, or termination of treatment

(e) Documentation of treatment.

(1) At a minimum, documentation of physical therapy services must include the following:

(A) any referral authorizing treatment;

(B) the initial examination and evaluation;

(C) the plan of care;

(D) documentation of each treatment session by the PT or PTA providing the services;

(E) reevaluations as required by this section;

(F) any conferences between the PT and PTA, as described in this section; and

(G) the discharge summary.

(2) The PTA must include the name of the supervising PT in his documentation of each treatment session.

(3) Physical therapy aides may not write or sign any physical therapy documents in the permanent record. However, a physical therapy aide may enter quantitative data for tasks delegated by the supervising PT or PTA.

(4) Discharge Summary. The PT must provide final documentation for discharge of a patient, including patient response to treatment at the time of discharge and any necessary follow-up plan. A PTA may participate in the discharge summary by providing subjective and objective patient information to the supervising physical therapist.

TAC §22.16.322.2. Role Delineation - PTA.
http://www.ptot.texas.gov/idl/81613405-AFBE-DADC-0D5E-4E0C0F590799

CHAPTER 346. PRACTICE SETTINGS FOR PHYSICAL THERAPY §346.1. Educational Settings.

(a) In the educational setting, the physical therapist conducts appropriate screenings, evaluations, and assessments to determine needed services to fulfill educational goals. When a student is determined by the physical therapist to be eligible for physical therapy as a related service defined by Special Education Law, the physical therapist provides written recommendations to the Admissions Review and Dismissal Committee as to the amount of specific services needed by the student (i.e., consultation or direct services and the frequency and duration of services).

(b) The physical therapist implements physical therapy services in accordance with the recommendations accepted by the school committee members and as reflected in the student's Admission Review and Dismissal

Committee reports.

(c) The physical therapist may provide general consultation or other physical therapy program services for school administrators, educators, assistants, parents and others to address district, campus, classroom or student-centered issues. For the student who is eligible to receive physical therapy as a related service in accordance with the student's Admission Review and Dismissal Committee reports, the physical therapist will also provide the consultation and direct types of specific services needed to implement specially designed goals and objectives included in the student's Individualized Education Program.

(d) The types of services which may require a physician's referral in the educational setting include the provision of individualized specially designed instructions and the direct physical modeling or hands-on demonstration of activities with a student who has been determined eligible to receive physical therapy as a related service. Additionally, they may include the direct provision of activities which are of such a nature that they are only conducted with the eligible student by a physical therapist or physical therapist assistant. The physical therapist should refer to §322.1 of this title (relating to Provision of Services).

(e) Evaluation and reevaluation in the educational setting will be conducted in accordance with federal mandates under Part B of the Individuals with Disabilities Education Act (IDEA), 20 USC §1414, or when warranted by a change in the child's condition, and include onsite reexamination of the child. The Plan of Care (Individual Education Program) must be reviewed by the PT at least every 60 school days, or concurrent with every visit if the student is seen at intervals greater than 60 school days, to determine if revisions are necessary.

§346.2. Other Practice Settings.

Other practice settings for physical therapy include but are not limited to: hospital, private clinic, industry, home health, and nursing home.

§346.3. Early Childhood (ECI) Setting.

(a) In the provision of early childhood services through the Early Childhood Intervention (ECI) program, the physical therapist conducts appropriate screenings, evaluations, and assessments to determine needed services to fulfill family-centered goals. When a child is determined by the PT to be eligible for physical therapy, the PT provides written recommendations to the Interdisciplinary Team as to the amount of specific services needed by the child.

(b) Subject to the provisions of §322.1 of this title (relating to Provision of Services), the PT implements physical therapy services in accordance with the recommendations accepted by the Interdisciplinary Team, as stated in the Individual Family Service Plan (IFSP).

(c) The types of services which require a referral from a qualified licensed healthcare practitioner include the provision of individualized specially designed instructions, direct physical modeling or hands-on demonstration of activities with a child who has been determined eligible to receive physical therapy. Additionally, a referral is required for services that include the direct provision of treatment and/or activities which are of such a nature that they are only conducted with the child by a physical therapist or physical therapist assistant.

(d) The physical therapist may provide general consultation or other program services to address child/family-centered issues.

(e) Evaluation and reevaluation in the educational setting will be conducted in accordance with federal mandates under Part C of the Individuals with Disabilities Education Act (IDEA), 20 USC §1436, or when warranted by a change in the child's condition, and include onsite reexamination of the child. The Plan of Care (Individual Family Service Plan) must be reviewed by the PT at least every 60 days, or concurrent with every visit if the child is seen at intervals greater than 60 days, to determine if revisions are necessary.

(10) Psychological services includes--

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(iv) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

(v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and

(vi) Assisting in developing positive behavioral intervention strategies.

22 TAC §465.38. Psychological Services in the Schools. [Excerpt]
This rule acknowledges the unique difference in the delivery of school psychological services in the public schools from psychological services in the private sector. The Board recognizes the purview of the State Board of Education and the Texas Education Agency in safeguarding the rights of public school children in Texas. The mandated multi disciplinary team decision making, hierarchy of supervision, regulatory provisions, and past traditions of school psychological service delivery both nationally and in Texas, among other factors, allow for rules of practice in the public schools which reflect these occupational distinctions from the private practice of psychology.
(1) Definition.
(C) The assessment of emotional or behavioral disturbance, for educational purposes, using psychological techniques and procedures is considered the practice of psychology.

Prior to requesting a psychological evaluation, school personnel should be able to document previous educational efforts and strategies and the results of those efforts including participation in or consideration for other programs within WCSESSA. Further, an intellectual and academic evaluation must be completed.

Psychological services may be requested through the RtI Committee meetings or an ARD/IEP evaluation planning committee. If a psychological is requested in an ARD/IEP meeting, the diagnostician will report the request if the psychological staff is not present at the ARD meeting. (See Section 1. - Referral)

(11) Recreation includes--
(i) Assessment of leisure function;
(ii) Therapeutic recreation services;
(iii) Recreation programs in schools and community agencies; and
(iv) Leisure education.
(12) Rehabilitation counseling services means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.
(13) School health services and school nurse services means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

TEC §38.032. SEIZURE MANAGEMENT AND TREATMENT PLAN.
(a) The parent or guardian of a student with a seizure disorder may seek care for the student's seizures while the student is at school or participating in a school activity by submitting to the school district at which the student is enrolled a copy of a seizure management and treatment plan developed by the student's parent or guardian and the physician responsible for the student's seizure treatment. The plan must be submitted to and reviewed by the district:
(1) before or at the beginning of the school year;
(2) on enrollment of the student, if the student enrolls in the district after the beginning of the school year; or
(3) as soon as practicable following a diagnosis of a seizure disorder for the student.
(b) A seizure management and treatment plan must:
(1) identify the health care services the student may receive at school or while participating in a school activity;
(2) evaluate the student's ability to manage and level of understanding of the student's seizures; and
(3) be signed by the student's parent or guardian and the physician responsible for the student's seizure treatment.
(c) The care of a student with a seizure disorder by a district employee under a seizure management plan submitted under this section is incident to or within the scope of the duties of the employee's position of employment and involves the exercise of judgment or discretion on the part of the employee for purposes of Section 22.0511.
(d) The immunity from liability provided by Section 22.0511 applies to an action or failure to act by a district employee in administering a medication, assisting with self-administration, or otherwise providing for the care

of a student under a seizure management plan submitted for the student under Subsection (a).

TEC §38.033. SEIZURE RECOGNITION AND RELATED FIRST AID TRAINING.

(a) A school nurse employed by a school district must complete an agency-approved online course of instruction for school nurses regarding managing students with seizure disorders that includes information about seizure recognition and related first aid.

(b) A school district employee, other than a school nurse, whose duties at the school include regular contact with students must complete an agency-approved online course of instruction for school personnel regarding awareness of students with seizure disorders that includes information about seizure recognition and related first aid.

(c) The agency may approve an online course of instruction provided by a nonprofit national foundation that supports the welfare of individuals with epilepsy and seizure disorders to satisfy the training required under Subsection (a) or (b). An online course of instruction approved by the agency under this subsection that is provided to a school district must be provided by the nonprofit entity free of charge.

(d) The agency shall adopt rules as necessary to administer this section.

SECTION 3. Not later than December 1, 2019, the Texas Education Agency shall approve online courses of instruction to satisfy the training requirements of Section 38.033, Education Code, as added by this Act.

Services are provided to eligible students with disabilities based on ARD/IEP Committee decision. These services are in addition to those routinely available to all students and may include the following:

a. screening and referral for health needs;

b. monitoring medication needed by students during school hours;

c. consultation with physicians, parents, and staff regarding effects of medication, and emergency care training for staff and parents;

d. counseling students with disabilities and their families concerning health care practices and services; and

e. assistance with catheter, tube feeding and other school health service procedures.

(14) Social work services in schools includes–

(i) Preparing a social or developmental history on a child with a disability;

(ii) Group and individual counseling with the child and family;

(iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;

(iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and

(v) Assisting in developing positive behavioral intervention strategies.

(15) Speech therapy is not a related service in Texas. *Speech therapy is considered instruction. See section 3. Disability Criteria*

(16) Transportation includes--

(i) Travel to and from school and between schools;

(ii) Travel in and around school buildings; and

(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

Local Transportation Rules

The WCSESSA's rules and regulations govern special education bus students unless designated otherwise by an ARD/IEP Committee. Violation of school bus rules and regulations may result in restrictions. The student will follow local guidelines unless the ARD/IEP committee recommendations are different. Special education transportation procedures include the following:

a. It is the responsibility of the parent to have the student ready for the bus each day.

b. It is the responsibility of the parent to notify the Transportation Department of any change of address.

c. If the student is to be transported to or from a place other than home, parent submits to the Transportation Department the student's name and address, and the person's name and address who will assume responsibility for the child.

d. Card files are maintained on all students; therefore, if home or work numbers change, parents notify the local campus, the Special Education Department, and the Transportation Department.

e. If the student will not be riding the bus for more than a day, parent contacts the Transportation Department in advance so that the driver can be notified.

TAC §89.1090. Transportation of Students Placed in a Residential Setting, Including the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf.
For each student placed in a residential setting by the student's admission, review, and dismissal (ARD) committee, including those students placed in the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf, the resident school district shall be responsible for transportation at the beginning and end of the term and for regularly scheduled school holidays when students are expected to leave the residential campus. The resident school district is not responsible for transportation costs for students placed in residential settings by their parents. Transportation costs shall not exceed state approved per diem and mileage rates unless excess costs can be justified and documented. Transportation shall be arranged using the most cost efficient means. When it is necessary for the safety of the student, as determined by the ARD committee, for an adult designated by the ARD committee to accompany the student, round-trip transportation for that adult shall also be provided. The resident school district and the residential facility shall coordinate to ensure that students are transported safely, including the periods of departure and arrival.

§300.139 Location of services and transportation. (see also Section 5. Instructional Arrangements)
(a) Services on private school premises. Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.
(b) Transportation.
(1) General.
(i) If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation--
(A) From the child's school or the child's home to a site other than the private school; and
(B) From the service site to the private school, or to the child's home, depending on the timing of the services.
(ii) LEAs are not required to provide transportation from the child's home to the private school.
(2) Cost of transportation. The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the LEA has met the requirement of §300.133.
(Authority: 20 U.S.C. 1412(a)(10)(A)) *(§300.133 Expenditures for Parentally placed students)*

TAC §89.1096. Provision of Services for Students Placed by their Parents in Private Schools or Facilities.
(e) The school district shall 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. *(See §300.139 above)*

III. REQUEST FOR RELATED SERVICES

Any request for a related service must be made through the RtI Committee upon initial referral, through the planning meeting to Review Existing Evaluation Data as described in Section 2 – FIE, or at the IEP meeting. If the related service provider is not in attendance at the planning meeting where the Review Existing Evaluation Data is completed, every effort is made by the evaluation representative to collaborate with the related service provider. Also, the evaluation representative is responsible for notifying the appropriate related service provider that an evaluation has been requested.

§300.34 Related services.
(a) General. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, Related services also includes school health services, school nurse services designed to enable a child with a disability to receive a free appropriate public education…

TEC §29.002. Definitions. In this subchapter, "special services" means:
(1) special education instruction, which may be provided by professional and supported by paraprofessional personnel in the regular classroom or in an instructional arrangement described by Section 42.151; and
(2) related services, which are developmental, corrective, supportive, or evaluative services, not instructional in nature, that may be required for the student to benefit from special education instruction and for implementation of a student's individualized education program.

Recommendations for service animals by the district will be made by the IEP committee based on current evaluation information including how the supportive service will help the student to benefit from special education. Additional data may be gathered if the service animal attends classes with the student at the parents request on a trial basis.

28 CFR § 35.104 Definitions
Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the handler's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.
http://www.ada.gov/regs2010/titleII_2010/titleII_2010_fr.pdf
83rd Legislature Summer 2013
Governor Perry signed House Bill 489, on June 10, 2013, which allows individuals with disabilities to use the assistance of service animals in all public places, including retail businesses and restaurants, without having to show the qualifications or certifications of the assistance animal.

SERVICE ANIMALS
The WCSESSA special education department will follow any current State or local school board policy regarding the use of service animals in the school buildings during the school day. Service animals are supportive services required for the student to receive FAPE(Free Appropriate Public Education) and benefit from special education. See definitions below.

28 CFR §35.136 Service animals.

(a) General. Generally, a public entity shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

(b) Exceptions. A public entity may ask an individual with a disability to remove a service animal from the premises if—

(1) The animal is out of control and the animal's handler does not take effective action to control it; or

(2) The animal is not housebroken.

(c) If an animal is properly excluded. If a public entity properly excludes a service animal under § 35.136(b), it shall give the individual with a disability the opportunity to participate in the service, program, or activity without having the service animal on the premises.

(d) Animal under handler's control. A service animal shall be under the control of its handler. A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (e.g., voice control, signals, or other effective means).

(e) Care or supervision. A public entity is not responsible for the care or supervision of a service animal.

(f) Inquiries. A public entity shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A public entity may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. A public entity shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal.

Generally, the WCSESSA may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).

(g) Access to areas of a public entity. Individuals with disabilities shall be permitted to be accompanied by their service animals in all areas of a public entity's facilities where members of the public, participants in services, programs or activities, or invitees, as relevant, are allowed to go.

(h) Surcharges. A public entity shall not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets. If a public entity normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by his or her service animal.

(i) Miniature horses.

(1) Reasonable modifications. A public entity shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability.

(2) Assessment factors. In determining whether reasonable modifications in policies, practices, or procedures can be made to allow a miniature horse into a specific facility, a public entity shall consider—

(i) The type, size, and weight of the miniature horse and whether the facility can accommodate these features;

(ii) Whether the handler has sufficient control of the miniature horse;

(iii) Whether the miniature horse is housebroken; and

(iv) Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

(C) Other requirements. Paragraphs 35.136(c) through (h) of this section, which apply to service animals, shall also apply to miniature horses.

SERVICE ANIMALS IN SCHOOLS:

The Wood County SSA acknowledges its responsibility to permit students and/or adults with disabilities to be accompanied by a "service animal" in its school buildings, in classrooms, and at school functions, as required by the Americans with Disabilities Act, 28 CFR Part 35, subject to the following:

__1. All requests for an individual with a disability to be accompanied by a service animal must be addressed in writing to the Executive Director of Special Education at _____ and must contain required documentation of vaccinations. This written request must be delivered to the Executive Director of Special Educations' Office at least 10 business days prior to bringing the service animal to school or a school function.

__2. Owners of a service dog must provide annual proof of the following vaccinations: DHLPPC (Distemper, Hepatitis, Leptospirosis, Paroninfluenza, Parvovirus, Caronavirus), Bordetella, and Rabies.
__3. Owners of service miniature horses must provide annual proof of the following vaccinations: Equine Infectious Amemia (Coggins Test), Rabies, Tetanus, Encephelomyelitis, Rhinoneumonitis, Influenza, and Strangles.
__4. All service dogs must be spayed or neutered.
__5. All service animals must be treated for, and kept free of, fleas and ticks.
__6. All service animals must be kept clean and groomed to avoid shedding and dander.
__7. Owners of service animals are liable for any harm or injury caused by the animal to other students, staff, visitors, and/or property.
__8. The animal must be a dog or, in specific circumstances, a miniature horse. No other species of animal, whether wild or domestic, will be permitted in schools as a "service animal."
__9. The animal must be "required" for the individual with a disability.
__10. he animal must be "individually trained" to do the work or task for the individual with a disability.
__11. Special Provisions/Miniature Horses: Requests to permit a miniature horse to accompany a student or adult with a disability in school buildings, in classroom, or at school functions, will be handled on a case-by-case basis, considering:
  a. The type, size, and weight of the miniature horse and whether the facility can accommodate these features.
  b. Whether the handler has sufficient control of the miniature horse.
  c. Whether the miniature horse is housebroken.
  d. Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.
__12. Removal of a Service Animal: A school administrator may ask an individual with a disability or his/her parents to remove a service animal from a school building, a classroom, or from a school function if any one of the following circumstances occurs:
  a. The animal is out of control and the animal's handler does not take effective action to control it.
  b. The animal is not housebroken.
  c. The animal's presence would "fundamentally alter" the nature of the service, program, or activity.
__13. A service animal must have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work tasks, in which case the service animal must be otherwise under the handler's control.
__14. The school system is not responsible for the care of supervision of a service animal, including walking the animal or responding to the animal's need to relieve itself.
  a. The school district is not responsible for providing a staff member to walk the service animal or to provide any other care or assistance to the animal.
  b. Students with service animals are expected to care and supervise their animal. In case of a young child or a student with disabilities who is unable to care for or supervise his service animal, the parent is responsible for providing care and supervision of the animal. Issues related to the care and supervision of service animals will be addressed on a case-by-case basis in the discretion of the building administrator.

Professional training. *A service animal by its very definition is an animal that is trained to perform the functions of assisting its disabled handler. What is most important is that the training is effective and the animal does perform the tasks required to assist its disabled handler and is well controlled in public. While the WCSESSA may not ask for any training certificate to document training of the service animal, there is a difference in a service animal and a therapy animal. A therapy animal, although a valued companion with an important purpose, is afforded no special consideration under the law in housing, transportation or public access. Many therapy animals visit nursing homes, orphanages, hospitals, etc., others reside in group living environments, doctor/dentist offices, rehab centers, as well as in the private homes of individuals who benefit from the therapeutic companionship of the animal.*

A service animal is for the benefit of a legally qualified disabled individual, and it has been trained (conditioned) to assist (by a task or function) that disabled individual. This assistance may often be therapeutic in nature, but the animal is nonetheless considered a service animal such as animals for emotional support or autism support who are trained to sit/stay or lay still and stay for extended periods of time to provide a focal point, divert thoughts, and other such trained (conditioned) tasks. When an animal is trained to assist (help, aid, support) a

qualified disabled individual due to the disability, the animal is considered a service animal rather than a therapy animal.

Generally, under the federal Americans with Disabilities Act (ADA) and other federal laws concerning service animals, two primary questions exist in whether a person has a legal right to claim their animal as a service animal. 28 CFR §35.136

- **is the animal required because of a disability and**
- **what work or task the animal has been trained to perform.**

IEP Meeting Scheduled if Parental Request for Service Animal

1. Schedule an IEP meeting to discuss necessity of the service animal on school premises.

2. The student must have a disability and the parent / student must share/verify two questions.

- *is the animal required because of the disability and*
- *what work or task the animal has been trained to perform? The animal must be a trained service animal. Document specific tasks the animal has been taught to perform or do work (help, aid, support) that assists the disabled individual. Parent will share with the IEP committee the specific ways the service animal assists the student at home and how the animal could assist the student to gain educational benefit at school that is not currently addressed in the IEP.*
- *Document if the service animal does or does not perform a task for the student that is already performed by the school district. Determine if the task performed by the service animal is needed for the student to receive FAPE (Free Appropriate Public Education).*

3. If the service animal performs a needed task that is not currently addressed in the IEP by the district, upon agreement by the IEP committee, a specific amount of time will be determined for a trial use of the service animal in order to gather needed data to verify educational benefit and its need in order to receive FAPE.

4. Trial Implementation

- *Specify amount of time for trial and plan follow up IEP meeting to review data gathered.*
- *Prior to an animal coming in the classroom, the principal will need to ensure there are no students with allergies to the animal species. The campus nurse will check student records of those students attending classes with the service animal.*
- *Specify tasks to observe that the animal will (help, aid, support) the student and teacher will document date, time and location of those supports to validate the need for the service animal.*
- *Designate staff to document if there are any disruptions due to the service animal. Document the type of disruption, date, time and location of any disruptions.*
- *Specify the animal needs for water and outdoor toileting schedule and person responsible. School personnel are not responsible for care of a service animal unless the ARD committee determines the animal is needed for the student to receive FAPE.*

5. The WCSESSA requires commonly used equipment such as a collar, leash, harness, backpack, neck scarf (bandana), cape, vest, jacket or T-shirt having an identifying patch to immediately alert the public that the animal is a service animal. The color red is most often used and is universally recognized as the service animal color.

6. After the trial implementation, the IEP Committee will reconvene to review the data and determine if the service animal is needed during the school day. Based on the data gathered, if the school district has an IEP in place that can meet the same service needs as the service animal, the animal is not needed during the school day. However, if the data supports the need for the service animal, then the WCSESSA will incorporate the service animal into the school day and assign personnel to assist with the care and toileting needs of the animal during the school day.

IV. RELATED SERVICES – Frequency, Location, Duration

§300.320 Definition of individualized education program.

(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include--

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(4) A statement of the 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, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child--

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;

(5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;

(6) (i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and

(ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why--

(A) The child cannot participate in the regular assessment; and

(B) The particular alternate assessment selected is appropriate for the child; and

(7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.

Documentation for provision of services *described in the IEP will be through a variety of information and sources based on the most appropriate means for the individual service and environment. Special education instructional and related services will be documented by progress on the IEP, student attendance and lesson plans. In addition, portfolios may be maintained as well as provider logs. Provider logs will be maintained by each service provider and reviewed at the IEP meeting as appropriate. Any service interruption resulting from special education staff absence will be reported to the appropriate administration following local district procedures.*

Documenting the Frequency, Location and Duration of Related Services

The Federal Register dated August 14, 2006, provides guidance in this area within its discussion of the comments regarding the proposed 2006 IDEA regulations. A comment to the regulations asked for clarification regarding the term duration. The response in the Federal Register was:

The meaning of the term "duration" will vary, depending on such things as the needs of the child, the service being provided, the particular format used in an IEP, and how the child's day and IEP are structured. What is required is that the IEP include information about the amount of services that will be provided to the child, so that the level of the agency's commitment of resources will be clear to parents and other IEP Team members. The amount of time to be committed to each of the various services to be provided must be appropriate to the specific service, and clearly stated in the IEP in a manner that can be understood by all involved in the development and implementation of the IEP. (Federal Register, Vol 71 No 156 p. 46667)

Requirements for Documenting the Provision of Related Services

- *Frequency – **how often** the child will receive the service(s) (number of times per day or week). If the service is less than daily then the conditions for the provision of the services must be clearly specified within the ARD documents using a weekly reference (ex: 1 hour per week, 30 minutes every two weeks)*
- *Duration - **how long** each "session" will last (number of minutes) and **when** services will begin and end (starting and ending dates) How long will each session be (15 minutes, 30 minutes)? If a term (1 class period) is*

used in the IEP to define duration of service, the term must be defined in the IEP (example: 1 class period = 50 minutes).

- *Location - **where** services will be provided (in the general education classroom or another setting such as a special education resource room.*

V. Private Service Providers

The local district does not allow private consultants or service providers to meet and work with students during the school day on the school premises. The school district is responsible for making decisions in the ARD/IEP meeting regarding the student needs (FAPE) that the school district is responsible for providing in the Least Restrictive Environment. Liability and other concerns constitute reason for this decision. If a parent request for a private service provider is made to a Principal or other school employee, an ARD/IEP Committee Meeting may be held to discuss the request and appropriate services for the student.

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Section 5 INSTRUCTIONAL ARRANGEMENTS

I. INSTRUCTIONAL ARRANGEMENTS AND SETTINGS

In addition to information contained in this section, please refer to the Student Attendance Accounting Handbook on the TEA website at: http://tea.texas.gov/index2.aspx?id=25769817607
For the most up-to-date information, see the TEA Student Attendance Accounting Handbook:
http://tea.texas.gov/index2.aspx?id=25769817607

TAC §89.63. Instructional Arrangements and Settings.
(a) The Wood County SSA will provide services with special education personnel to students with disabilities in order to meet the special needs of those students in accordance with 34 Code of Federal Regulations, §§300.114-300.118.
(b) Subject to §89.1075(f) of this title (relating to General Program Requirements and Local District Procedures) for the purpose of determining the student's instructional arrangement/setting, the regular school day is defined as the period of time determined appropriate by the admission, review, and dismissal (ARD) committee.
(c) Instructional arrangements/settings shall be based on the individual needs and individualized education programs (IEPs) of eligible students receiving special education services and shall include the following.
(1) **Mainstream**. This instructional arrangement/setting is for providing special education and related services to a student in the regular classroom in accordance with the student's IEP. Qualified special education personnel must be involved in the implementation of the student's IEP through the provision of direct, indirect and/or support services to the student, and/or the student's regular classroom teacher(s) necessary to enrich the regular classroom and enable student success. The student's IEP must specify the services that will be provided by qualified special education personnel to enable the student to appropriately progress in the general education curriculum and/or appropriately advance in achieving the goals set out in the student's IEP. Examples of services provided in this instructional arrangement include, but are not limited to, direct instruction, helping teacher, team teaching, co-teaching, interpreter, education aides, curricular or instructional modifications/accommodations, special materials/equipment, positive classroom behavioral interventions and supports, consultation with the student and his/her regular classroom teacher(s) regarding the student's progress in regular education classes, staff development, and reduction of ratio of students to instructional staff. *The role of the special education teacher for a fully included mainstream student is to follow the IEP for those students on their assigned case load. The IEP is individualized therefore student's will receive varying degrees of specially designed instruction described above. Qualified special education personnel must be involved in the implementation of the student's IEP through the provision of direct, indirect, and/or support services - to the student in the general education classroom and/or; in collaboration with the student's general education classroom teachers(s). Monitoring student progress in and of itself does* ***not*** *constitute a special education service. If certified special education personnel are* ***only monitoring*** *student progress, mainstream special education funding cannot be generated.* ***Requirements Related to Teachers Providing Instruction in Mainstream Settings:*** *A student with a disability receives specially designed instruction. The specially designed instruction documented in the IEP is provided by special education personnel. One teacher, even if dually certified, may not serve in both a general education and a special education role simultaneously when serving students in grades K–12. Students with disabilities who are aged 3 or 4 years may have an instructional arrangement/setting code of 40, mainstream, if special education services are provided in classroom settings with nondisabled peers. The only context in which a dually certified teacher may serve in both a general education and a special education role is in an early childhood program for students aged 3 or 4 years.* TEA-SAAH
(2) **Homebound**. This instructional arrangement/setting is for providing special education and related services to students who are served at home or hospital bedside.
(A) Students served on a homebound or hospital bedside basis are expected to be confined for a minimum of four consecutive weeks as documented by a physician licensed to practice in the United States. Homebound or hospital bedside instruction may, as provided by local district policy, also be provided to chronically ill students who are expected to be confined for any period of time totaling at

least four weeks throughout the school year as documented by a physician licensed to practice in the United States. The student's ARD committee shall determine the amount of services to be provided to the student in this instructional arrangement/setting in accordance with federal and state laws, rules, and regulations, including the provisions specified in subsection (b) of this section.

(B) Home instruction may also be used for services to infants and toddlers (birth through age 2) and young children (ages 3-5) when determined appropriate by the child's individualized family services plan (IFSP) committee or ARD committee. This arrangement/setting also applies to school districts described in Texas Education Code, §29.014.

Homebound Notes

To be placed in the special education homebound instructional setting, a student aged 6 years or older must meet the following four criteria:

- The student is eligible for special education and related services as determined by an ARD committee.
- The student is expected to be confined at home or hospital bedside for a minimum of 4 weeks (the weeks need not be consecutive).
- The student is confined at home or hospital bedside for medical reasons only.
- The student's medical condition is documented by a physician licensed to practice in the United States. You can access the Texas Medical Board's searchable database of licensed physicians at: https://public.tmb.state.tx.us/HCP_Search/SearchInput.aspx

The student's ARD committee determines the amount of services to be provided to the student in this instructional arrangement/setting.

- The teacher serving a student at home or hospital bedsite ("houmebound teacher") while the student is in the special education homebound setting must be a certified special education teacher. Beginning with the 2016-17 school year, schools and teachers only needed to meet state requirements for certification. The federal term of "highly qualified teacher status" no longer applies. It is important to note that all state certification requirements adopted in State Board for Educator Certification rules remain in place. For the certification required for particular assignments, see 19 TAC Chapter 231, available at: http://ritter.tea.state.tx.us/sbecrules/tac/chapter231/
- A student aged 6 years or older who is served in the special education homebound instructional setting retains the same ADA eligibility code he or she had before receiving homebound services, regardless of hwo many hours the student will be served in the homebound instructional setting.
- The placement of a student who is expelled must not be changed to the homebound instructional setting (see 10.6.2. Disciplinary Removals of Students with Disabilities for detailed information regarding appropriate instructional setting codes and ADA eligibility when expelling students who are receiving special education and related services).

General Education Homebound (GEH)

Any general education student should be referred to the local campus GEH committee.

Student Attendance Accounting Manual - (Section 3-7)

(3) **Hospital class**. This instructional arrangement/setting is for providing special education instruction in a classroom, in a hospital facility, or a residential care and treatment facility not operated by the school district. If the students residing in the facility are provided special education services outside the facility, they are considered to be served in the instructional arrangement in which they are placed and are not to be considered as in a hospital class.

(4) **Speech therapy**. This instructional arrangement/setting is for providing speech therapy services whether in a regular education classroom or in a setting other than a regular education classroom. When the only special education or related service provided to a student is speech therapy, then this instructional arrangement may not be combined with any other instructional arrangement.

(5) **Resource room/services**. This instructional arrangement/setting is for providing special education and related services to a student in a setting other than regular education for less than 50% of the regular school day.

(6) **Self-contained** (mild, moderate, or severe) regular campus. This instructional arrangement/setting is for providing special education and related services to a student who is in a self-contained program for 50% or more of the regular school day on a regular school campus.

(7) **Off-home campus.** This instructional arrangement/setting is for providing special education and related services to the following, including, but not limited to, students at South Texas Independent School District and Windham Independent School District:

(A) a student who is one of a group of students from more than one school district served in a single location when a free appropriate public education is not available in the respective sending district;

(B) a student in a community setting or environment (not operated by a school district) that prepares the student for postsecondary education/training, integrated employment, and/or independent living in coordination with the student's individual transition goals and objectives, including a student with regularly scheduled instruction or direct involvement provided by school district personnel, or a student in a facility not operated by a school district (other than a nonpublic day school) with instruction provided by school district personnel; or

(C) a student in a self-contained program at a separate campus operated by the school district that provides only special education and related services.

TEC §89.1094 Students Receiving Special Education and Related Services in an Off-Campus Program.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) School district--The definition of a school district includes independent school districts established under Texas Education Code (TEC), Chapter 11, Subchapters A-F, and open-enrollment charter schools established under TEC, Chapter 12, Subchapter D.

(2) Off-campus program--An off-campus program includes special education and related services provided during school hours in a facility other than a school district campus.

(3) Off-campus program provider--An off-campus program provider is an entity that provides the services identified in subsection (a)(2) of this section and includes:

(A) a county system operating under application of former law as provided in TEC, §11.301;

(B) a regional education service center established under TEC, Chapter 8;

(C) a nonpublic day school; or

(D) any other public or private entity with which a school district enters into a contract under TEC, §11.157, for the provision of special education services in a facility other than a school district campus operated by a school district.

(b) Off-campus program placement. A school district may contract with an off-campus program provider to provide some or all of the special education and related services to a student in accordance with the requirements in this section.

(1) Before the school district places a student with a disability in, or refers a student to, an off-campus program, the district shall initiate and conduct an onsite review to ensure that the off-campus program is appropriate for meeting the student's educational needs.

(2) Before the school district places a student with a disability in, or refers a student to, an off-campus program, the district shall initiate and conduct a meeting of the student's admission, review, and dismissal (ARD) committee to develop an individualized education program (IEP) for the student in accordance with 34 Code of Federal Regulations (CFR), §§300.320-300.325, state statutes, and commissioner of education rules in Chapter 89 of this title (relating to Commissioner's Rules Concerning Special Education Services).

(3) The appropriateness of the off-campus program for each student placed shall be documented in the IEP annually. The student's ARD committee may only recommend an off-campus program placement for a student if the committee determines that the nature and severity of the student's disability and special education needs are such that the student cannot be satisfactorily educated in the school district.

(A) The student's IEP must list which services the school district is unable to provide and which services the facility will provide.

(B) The ARD committee shall establish, in writing, criteria and estimated timelines for the student's return to the school and document this information in the IEP.

(C) The school district shall make two on-site visits annually, one announced and one unannounced, to:

(i) verify that the off-campus program can, and will, provide the services listed in the student's IEP that the off-campus program has agreed to provide to the student;

(ii) obtain written verification that the facility meets minimum standards for health and safety and holds applicable local and state accreditation and permit requirements; and

(iii) verify the educational program provided at the off-campus program facility is the least restrictive environment for the student.

(4) The placement of more than one student in the same off-campus program facility may be considered in the same on-site visit to a facility. However, the IEP of each student must be individually reviewed, and a determination of appropriateness of placement and services must be made for each student.

(c) Notification. Within 30 calendar days from an ARD committee's decision to place a student in an off-campus program, a school district must electronically submit to the Texas Education Agency (TEA) notice of, and information regarding, the placement in accordance with submission procedures specified by the TEA.

(1) If the off-campus program is on the commissioner's list of approved off-campus programs, the TEA will review the student's IEP and placement as required by 34 CFR, §300.120, and, in the case of a placement in or referral to a private school or facility, 34 CFR, §300.146. After review, the TEA will notify the school district whether federal or state funds for the off-campus program placement are approved. If the TEA does not approve the use of funds, it will notify the school district of the basis for the non-approval.

(2) If the off-campus program is not on the commissioner's list of approved off-campus programs, the TEA will begin the approval procedures described in subsection (d) of this section. School districts must ensure there is no delay in implementing a child's IEP in accordance with 34 CFR, §300.103(c).

(3) If an off-campus program placement is ordered by a special education hearing officer or court of competent jurisdiction, the school district must notify the TEA of the order within 30 calendar days. The off-campus program serving the student is not required to go through the approval procedures described in subsection (d) of this section for the ordered placement. If, however, the school district or other school districts intend to place other students in the off-campus program, the off-campus program will be required to go through the approval procedures to be included on the commissioner's list of approved off-campus programs.

(d) Approval of the off-campus program. Off-campus programs must have their educational programs approved for contracting purposes by the commissioner.

(1) For a program to be approved, the school district must electronically submit to the TEA notice of, and information regarding, the placement in accordance with submission procedures specified by the TEA. The TEA shall begin approval procedures and conduct an on-site visit to the facility within 30 calendar days after the TEA has been notified by the school district. Initial approval of the off-campus program shall be for one calendar year.

(2) The off-campus program may be approved only after, at minimum, a programmatic evaluation of personnel qualifications, adequacy of physical plant and equipment, and curriculum content.

(3) The commissioner shall renew approvals and issue new approvals only for those facilities that have a contract already in place with a school district for the placement of one or more students or that have a pending request from a school district. This approval does not apply to facilities that only provide related services. Nor does it apply to facilities when the school district, within which the facility is located, provides the educational program. Re-approval of the off-campus program may be for one, two, or three years at the TEA's discretion.

(e) Funding procedures and other requirements. The cost of off-campus program placements will be funded according to TEC, §42.151 (Special Education), and §89.63(e) of this title (relating to Instructional Arrangements and Settings).

(1) Contracts between school districts and approved off-campus programs must not exceed a school district's fiscal year and shall not begin prior to July 1 of the contracted fiscal year.

(2) Amendments to a contract must be electronically submitted to the TEA in accordance with submission procedures specified by the TEA no later than 30 calendar days from the change in placement or services within the school district's fiscal year.

(3) If a student who is placed in an off-campus program by a school district changes his or her residence to another Texas school district during the school year, the school district must notify the TEA within 10 calendar days of the date on which the school district ceased contracting with the off-campus program for the student's placement. The student's new school district must meet the requirements of 34 CFR, §300.323(e), by providing comparable services to those described in the student's IEP from the previous school district until the new school district either adopts the student's IEP from the previous school district or develops, adopts, and implements a new IEP. The new school district must comply with all procedures described in this section for continued or new off-campus program placement.

The district will follow requirements of TEC §89.1094for any off-campus placement.

(8) **Nonpublic day school**. This instructional arrangement/setting is for providing special education and related services to students through a contractual agreement with a nonpublic school for special education.

(9) **Vocational adjustment class/program**. This instructional arrangement/setting is for providing special education and related services to a student who is placed on a job (paid or unpaid unless otherwise prohibited by law) with regularly scheduled direct involvement by special education personnel in the implementation of the student's IEP. This instructional arrangement/setting shall be used in conjunction with the student's individual transition goals and only after the school district's career and technical education classes have been considered and determined inappropriate for the student.

(10) **Residential care and treatment facility** (not school district resident). This instructional arrangement/setting is for providing special education instruction and related services to students who reside in care and treatment facilities and whose parents do not reside within the boundaries of the school district providing educational services to the students. In order to be considered in this arrangement, the services must be provided on a school district campus. If the instruction is provided at the facility, rather than on a school district campus, the instructional arrangement is considered to be the hospital class arrangement/setting rather than this instructional arrangement. Students with disabilities who reside in these facilities may be included in the average daily attendance of the district in the same way as all other students receiving special education.

(11) **State supported living center**. This instructional arrangement/setting is for providing special education and related services to a student who resides at a state supported living center when the services are provided at the state supported living center location. If services are provided on a local school district campus, the student is considered to be served in the residential care and treatment facility arrangement/setting.

(d) The appropriate instructional arrangement for students from birth through the age of two with visual and/or auditory impairments shall be determined in accordance with the IFSP, current attendance guidelines, and the agreement memorandum between the Texas Education Agency (TEA) and the Department of Assistive and Rehabilitative Services (DARS) Early Childhood Intervention (ECI) Services.

(e) For nonpublic day school placements, the school district or shared service arrangement shall submit information to the TEA indicating the students' identification numbers, initial dates of placement, and the names of the facilities with which the school district or shared service arrangement is contracting. The school district or shared service arrangement shall not count contract students' average daily attendance as eligible. The TEA shall determine the number of contract students reported in full-time equivalents and pay state funds to the district according to the formula prescribed in law.

(f) Other program options which may be considered for the delivery of special education and related services to a student may include the following:

(1) contracts with other school districts; and

(2) other program options as approved by the TEA.

II. PRIVATE SCHOOLS: ENROLLED BY THE PARENTS

§300.129 State responsibility regarding children in private schools.
The State must have in effect policies and procedures that ensure that LEAs, and, if applicable, the SEA, meet the private school requirements in §§300.130 through 300.148. (Authority: 20 U.S.C. 1412(a)(10))

§300.130 Definition of parentally-placed private school children with disabilities.
Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private including religious, schools or facilities that meet the definition of elementary schools in §300.13 or secondary schools in §300.36, other than children with disabilities covered under §§300.145 through 300.147. (Authority: 20 U.S.C. 1412(a)(10)(A))

§300.13 Elementary school. Elementary school means a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under State law.

§300.36 Secondary school. Secondary school means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.
*(**IMPORTANT:** See also TAC §89.1096. Services for Students Placed by their Parents – Section 4 IEP).*

§300.131 Child find for parentally-placed private school children with disabilities.
(a) General. The WCSESSA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the WCSESSA, in accordance with paragraphs (b) through (e) of this section, and §§300.111 and 300.201.
(b) Child find design. The child find process must be designed to ensure--
(1) The equitable participation of parentally-placed private school children; and
(2) An accurate count of those children.
(c) Activities. In carrying out the requirements of this section, the WCSESSA, or, if applicable, the SEA, must undertake activities similar to the activities undertaken for the agency's public school children.
(d) Cost. The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if WCSESSA has met its obligation under §300.133. *(Private school expenditures - below)*
(e) Completion period. The child find process must be completed in a time period comparable to that for other students attending public schools in the WCSESSA consistent with §300.301. *(Initial Evaluations- section 2 of this document)*
(f) Out-of-state children. Each LEA in which private, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located. (Authority: 20 U.S.C. 1412(a)(10)(A)(ii))

§300.132 Provision of services for parentally-placed private school children with disabilities--basic requirement.
(a) General. To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the WCSESSA, provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services determined in accordance with §300.137, unless the Secretary has arranged for services to those children under the by-pass provisions in §§300.190 through 300.198.
(b) Services plan parentally-placed private school children with disabilities. In accordance with paragraph (a) of this section and §§300.137 through 300.139, a services plan must be developed and implemented for each private school child with a disability who has been designated by the WCSESSA in which the

private school is located to receive special education and related services under this part. *(Service Plan - Section 4-IEP)*

(c) Record keeping. The WCSESSA must maintain in its records, and provide to the SEA, the following information related to parentally-placed private school children covered under §§300.130 through 300.144:

(1) The number of children evaluated;

(2) The number of children determined to be children with disabilities; and

(3) The number of children served. (Authority: 20 U.S.C. 1412(a)(10)(A)(i))

*(**IMPORTANT:** See TAC §89.1096. Services for Students Placed by their Parents – Section 4 IEP).*

§300.133 Expenditures.

(a) Formula. To meet the requirement of §300.132(a), the WCSESSA must spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities:

(1) For children aged 3 through 21, an amount that is the same proportion of the WCSESSA's total subgrant under section 611(f) of the Act as the number of private school children with disabilities aged 3 through 21 who are enrolled by their parents in private , including religious, elementary and secondary schools located in the school district served by the WCSESSA, is to the total number of children with disabilities in its jurisdiction aged 3 through 21.

(2) (i) For children aged three through five, an amount that is the same proportion of the WCSESSA's total subgrant under section 619(g) of the Act as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in private, including religious, elementary schools located in the school district served by the WCSESSA, is to the total number of children with disabilities in its jurisdiction aged three through five.

(ii) As described in paragraph (a)(2)(i) of this section, children aged three through five are considered to be parentally-placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school in §300.13.

(3) If an LEA has not expended for equitable services all of the funds described in paragraphs (a)(1) and (a)(2) of this section by the end of the fiscal year for which Congress appropriated the funds, the LEA must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school children with disabilities during a carry-over period of one additional year.

(b) Calculating proportionate amount. In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, the WCSESSA, after timely and meaningful consultation with representatives of private schools under §300.134, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the WCSESSA. (See Appendix B of the final regulations for an example of how proportionate share is calculated).

(c) Annual count of the number of parentally-placed private school children with disabilities.

(1) The Wood County SSA must--

(i) After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities (consistent with §300.134), determine the number of parentally-placed private school children with disabilities attending private schools located in the LEA; and

(ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

(2) The child count must be used to determine the amount that the WCSESSA must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year.

(d) Supplement, not supplant. State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities under this part. (Authority: 20 U.S.C. 1412(a)(10)(A))

§300.134 Consultation.

To ensure timely and meaningful consultation, the WCSESSA, or, if appropriate, an SEA, must consult with private school representatives and representatives of parents of parentally-placed private school

children with disabilities during the design and development of special education and related services for the children regarding the following:

(a) Child find. The child find process, including--

(1) How parentally-placed private school children suspected of having a disability can participate equitably; and

(2) How parents, teachers, and private school officials will be informed of the process. *See Child Find activities in Section 1 of this document.*

(b) Proportionate share of funds. The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under §300.133(b), including the determination of how the proportionate share of those funds was calculated. *See Section 8 Administration.*

(c) Consultation process. The consultation process among the WCSESSA, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services. *All private schools located in the WCSESSA will be contacted via survey to provide input into the process and information will be shared on how to obtain referral information from the school district campus.*

(d) Provision of special education and related services. How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of--

(1) The types of services, including direct services and alternate service delivery mechanisms; and

(2) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and

(3) How and when those decisions will be made;

Decisions made after the survey results will be shared with private school administration and appropriate parents affected.

(e) Written explanation by WCSESSA regarding services. How, if the WCSESSA disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract) the WCSESSA will provide to the private school officials a written explanation of the reasons why the WCSESSA chose not to provide services directly or through a contract.

§300.135 Written affirmation.

(a) When timely and meaningful consultation, as required by §300.134, has occurred, the WCSESSA must obtain a written affirmation signed by the representatives of participating private schools.

(b) If the representatives do not provide the affirmation within a reasonable period of time, the WCSESSA must forward the documentation of the consultation process to the TEA.

The WCSESSA will collect and keep on file any written affirmations. If unable to obtain a written affirmation, the WCSESSA will submit documentation explaining the attempts to secure the written affirmation to TEA at: sped@tea.state.tx.us

§300.136 Compliance.

(a) General. A private school official has the right to submit a complaint to the SEA that the WCSESSA--

(1) Did not engage in consultation that was meaningful and timely; or

(2) Did not give due consideration to the views of the private school official.

(b) Procedure.

(1) If the private school official wishes to submit a complaint, the official must provide to the SEA the basis of the noncompliance by the WCSESSA with the applicable private school provisions in this part; and

(2) The WCSESSA must forward the appropriate documentation to the SEA.

(3) (i) If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary by providing the information on noncompliance described in paragraph (b)(1) of this section; and

(ii) The SEA must forward the appropriate documentation to the Secretary.

(Authority: 20 U.S.C. 1412(a)(10)(A)(v))

§300.137 Equitable services determined.

(a) No individual right to special education and related 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.

(b) Decisions.

(1) Decisions about the services that will be provided to parentally-placed private school children with disabilities under §§300.130 through 300.144 must be made in accordance with paragraph (c) of this section and §300.134(c).

(2) The WCSESSA must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.

(c) Services plan for each child served under §§300.130 through 300.144. If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from WCSESSA, the WCSESSA must--

(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with §300.138(b); and

(2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the WCSESSA shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.

§300.138 Equitable services provided.

(a) General.

(1) The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the qualification requirements of §300.156(c).

(2) Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

(b) Services provided in accordance with a services plan.

(1) Each parentally-placed private school child with a disability who has been designated to receive services under §300.132 must have a services plan that describes the specific special education and related services that the WCSESSA will provide to the child in light of the services that the WCSESSA has determined, through the process described in §§300.134 and 300.137, it will make available to parentally-placed private school children with disabilities.

(2) The services plan must, to the extent appropriate--

(i) Meet the requirements of §300.320, or for a child ages three through five, meet the requirements of §300.323(b) with respect to the services provided; and

(ii) Be developed, reviewed, and revised consistent with §§300.321 through 300.324.

(c) Provision of equitable services.

(1) The provision of services pursuant to this section and §§300.139 through 300.143 must be provided:

(i) By employees of WCSESSA; or

(ii) Through contract by the WCSESSA with an individual, association, agency, organization, or other entity.

(2) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

§300.139 Location of services and transportation.

(a) Services on private school premises. Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.

(b) Transportation.

(1) General.

(i) If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation--

(A) From the child's school or the child's home to a site other than the private school; and

(B) From the service site to the private school, or to the child's home, depending on the timing of the services.

(ii) LEAs are not required to provide transportation from the child's home to the private school.

(2) Cost of transportation. The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the WCSESSA has met the requirement of §300.133.

§300. 140 Due process complaints and State complaints.

(a) Due process not applicable, except for child find.

(1) Except as provided in paragraph (b) of this section, the procedures in §§300.504 through 300.519 do not apply to complaints that an LEA has failed to meet the requirements of §§300.132 through 300.139, including the provision of services indicated on the child's services plan.

(b) Child find complaints—to be filed with the LEA in which the private school is located.

(1) The procedures in §§300.504 through 300.519 apply to complaints that an LEA has failed to meet the child find requirements in §§300.131 including the requirements in §§300.300 through 300.311.

(2) Any due process complaint regarding the child find requirements (as described in paragraph (b)(1) of the section) must be filed with the LEA in which the private school is located and a copy must be forwarded to the SEA.

(c) State complaints.

(1) Any complaints that an SEA or LEA has failed to meet the requirements of §§300.132 through 300.135 and §§300.137 through 300.134 must be filed under the procedures in §§300.151 through 300.153.

(2) A complaint filed by a private school official under §300.136(a) must be filed with the SEA in accordance with the procedures in §300.136(b). (Authority: 20 U.S.C. 1412(a)(10)(A))

§300.141 Requirement that funds not benefit a private school.

(a) The WCSESSA may not use funds provided under section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school.

(b) The WCSESSA must use funds provided under Part B of the Act to meet the special education and related services needs of parentally-placed private school children with disabilities, but not for meeting--

(1) The needs of a private school; or

(2) The general needs of the students enrolled in the private school.

§300.142 Use of personnel.

(a) Use of public school personnel. The WCSESSA may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities--

(1) To the extent necessary to provide services under §§300.130 through 300.144 for parentally-placed private school children with disabilities; and

(2) If those services are not normally provided by the private school.

(b) Use of private school personnel. The WCSESSA may use funds available under sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under §§300.130 through 300.144 if--

(1) The employee performs the services outside of his or her regular hours of duty; and

(2) The employee performs the services under public supervision and control.

(Authority: 20 U.S.C. 1412(a)(10)(A))

§300.143 Separate classes prohibited.

The WCSESSA may not use funds available under section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the children if—

(a) The classes are at the same site; and

(b) The classes include students enrolled in public schools and students enrolled in private schools.

(Authority: 20 U.S.C. 1412(a)(10)(A))

§300.144 Property, equipment, and supplies.

(a) The WCSESSA must control and administer the funds used to provide special education and related services under §§300.137 through 300.139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.

(b) The WCSESSA may place equipment and supplies in a private school for the period of time needed for the Part B program.

(c) The WCSESSA must ensure that the equipment and supplies placed in a private school--

(1) Are used only for Part B purposes; and

(2) Can be removed from the private school without remodeling the private school facility.

(d) The WCSESSA must remove equipment and supplies from a private school if--

(1) The equipment and supplies are no longer needed for Part B purposes; or

(2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.

(e) No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities. (Authority: 20 U.S.C. 1412(a)(10)(A)(vii))

III. PRIVATE SCHOOLS: PLACED OR REFERRED BY THE WCSESSA

§300.145 Applicability of §§300.145 through 300.147.
Sections 300.146 through 300.147 apply only to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services. (Authority: 20 U.S.C. 1412(a)(10)(B))

§300.146 Responsibility of State educational agency.
Each SEA must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency--
(a) Is provided special education and related services--
(1) In conformance with an IEP that meets the requirements of §§300.320 through 300.325 *(IEP section 4 of this document)* **; and**
(2) At no cost to the parents;
(b) Is provided an education that meets the standards that apply to education provided by the SEA and LEAs including the requirements of this part, except for §300.156(c) *(Personnel qualifications section 8 of this document)* **; and**
(c) Has all of the rights of a child with a disability who is served by the WCSESSA.
(Authority: 20 U.S.C. 1412(a)(10)(B))

§300.147 Implementation by State educational agency. In implementing §300.146, the SEA must--
(a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;
(b) Disseminate copies of applicable standards to each private school and facility to which the WCSESSA has referred or placed a child with a disability; and
(c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.
(Authority: 20 U.S.C. 1412(a)(10)(B))

TAC §89.1075. General Program Requirements and Local District Procedures.
(g) School districts that contract for services from non-public day schools must do so in accordance with 34 Code of Federal Regulations, §300.147, and procedures developed by the TEA.

IV. PRIVATE SCHOOLS: ENROLLED BY PARENT - WHEN FAPE IS AT ISSUE

§300.148 Placement of children by parents if FAPE is at issue.

(a) General. This part does not require the WCSESSA 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 the WCSESSA made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the WCSESSA must include that child in the population whose needs are addressed consistent with §§300.131 through 300.144 (found in this section 5 of the document)

(b) Disagreements about FAPE. Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in §§300.504 through 300.520. (in section 7 of this document) **.**

(c) Reimbursement for private school placement. If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.

(d) Limitation on reimbursement. The cost of reimbursement described in paragraph (c) of this section may be reduced or denied--

(1) If--

(i) At the most recent IEP Team meeting that the parents attended prior to removal of the child from the WCSESSA, the parents did not inform the IEP Team that they were rejecting the placement proposed by the WCSESSA to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the WCSESSA of the information described in paragraph (d)(1)(i) of this section;

(2) If, prior to the parents' removal of the child from the public school, the WCSESSA informed the parents, through the notice requirements described in §300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(e) Exception. Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement--

(1) Must not be reduced or denied for failure to provide the notice if--

(i) The school prevented the parent from providing the notice;

(ii) The parents had not received notice, pursuant to §300.504, of the notice requirement in paragraph (d)(1) of this section; or

(iii) Compliance with paragraph (d)(1) of this section would likely result in physical harm to the child; and

(2) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if--

(i) The parents are not literate or cannot write in English; or

(ii) Compliance with paragraph (d)(1) of this section would likely result in serious emotional harm to the child. (Authority: 20 U.S.C. 1412(a)(10)(C))

V. CONTRACTING FOR EDUCATIONAL PLACEMENT

A. Residential Placements

TAC §89.1115. Memorandum of Understanding Concerning Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities. *(Section 8. Administration)*

§300.104 Residential placement.
If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child. (Authority: 20 U.S.C. 1412(a)(1), 1412(a)(10)(B))

TEC §29.008. Contracts for Services; Residential Placement.

(a) A school district, shared services arrangement unit, or regional education service center may contract with a public or private facility, institution, or agency inside or outside of this state for the provision of services to students with disabilities. Each contract for residential placement must be approved by the commissioner. The commissioner may approve a residential placement contract 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.

(b) Except as provided by Subsection (c), costs of an approved contract for residential placement may be paid from a combination of federal, state, and local funds. The local share of the total contract cost for each student is that portion of the local tax effort that exceeds the district's local fund assignment under Section 42.252, divided by the average daily attendance in the district. If the contract involves a private facility, the state share of the total contract cost is that amount remaining after subtracting the local share. If the contract involves a public facility, the state share is that amount remaining after subtracting the local share from the portion of the contract that involves the costs of instructional and related services. For purposes of this subsection, "local tax effort"means the total amount of money generated by taxes imposed for debt service and maintenance and operation less any amounts paid into a tax increment fund under Chapter 311, Tax Code.

(c) When a student, including one for whom the state is managing conservator, is placed primarily for care or treatment reasons in a private residential facility that operates its own private education program, none of the costs may be paid from public education funds. If a residential placement primarily for care or treatment reasons involves a private residential facility in which the education program is provided by the school district, the portion of the costs that includes appropriate education services, as determined by the school district's admission, review, and dismissal committee, shall be paid from state and federal education funds.

(d) A district that contracts for the provision of education services rather than providing the services itself shall oversee the implementation of the student's individualized education program and shall annually reevaluate the appropriateness of the arrangement. An approved facility, institution, or agency with whom the WCSESSA contracts shall periodically report to the district on the services the student has received or will receive in accordance with the contract as well as diagnostic or other evaluative information that the district requires in order to fulfill its obligations under this subchapter.
For any student in a RF facility in WCSESSA, the district will oversee the implementation of the student's IEP and annual reevaluate appropriateness. If contracting becomes necessary, reports will be obtained each 6 weeks on the services the student receives.
http://www.tea.state.tx.us/index2.aspx?id=2147495560&menu_id=2147483703&menu_id2=2147483719

TAC §89.61. Contracting for Residential Educational Placements for Students with Disabilities.

(a) Residential placement. The WCSESSA may contract for residential placement of a student when the student's admission, review, and dismissal (ARD) committee determines that a residential placement is necessary in order for the student to receive a free appropriate public education (FAPE).

(1) The WCSESSA may contract for a residential placement of a student only with either public or private residential facilities which maintain current and valid licensure by the Texas Department of Aging and Disability Services, Texas Department of Family and Protective Services, or Department of State Health Services for the particular disabling condition and age of the student. The WCSESSA may contract for an out-of-state residential placement in accordance with the provisions of subsection (c)(3) of this section.

(2) Subject to subsections (b) and (c) of this section, the district may contract with a residential facility to provide some or all of the special education services listed in the contracted student's individualized education program (IEP). If the facility provides any educational services listed in the student's IEP, the facility's education program must be approved by the commissioner of education in accordance with subsection (c) of this section.

(3) A school district which intends to contract for residential placement of a student with a residential facility under this section shall notify the Texas Education Agency (TEA) of its intent to contract for the residential placement through the residential application process described in subsection (b) of this section.

(4) The WCSESSA has the following responsibilities when making a residential placement.

(A) Before the WCSESSA places a student with a disability in, or refers a student to, a residential facility, the district shall initiate and conduct a meeting of the student's ARD committee to develop an IEP for the student in accordance with 34 Code of Federal Regulations, §§300.342-300.347, state statutes, and commissioner of education rules.

(B) For each student, the services which the school district is unable to provide and which the facility will provide shall be listed in the student's IEP.

(C) For each student, the ARD committee shall establish, in writing, criteria and estimated timelines for the student's return to the school district.

(D) The appropriateness of the facility for each student residentially placed shall be documented in the IEP. General screening by a regional education service center is not sufficient to meet the requirements of this subsection.

(E) The school district shall make an initial and an annual on-site visit to verify that the residential facility can, and will, provide the services listed in the student's IEP which the facility has agreed to provide to the student.

(F) For each student placed in a residential facility (both initial and continuing placements), the school district shall verify, during the initial residential placement ARD committee meeting and each subsequent annual ARD committee meeting, that:

(i) the facility meets minimum standards for health and safety;

(ii) residential placement is needed and is documented in the IEP; and

(iii) the educational program provided at the residential facility is appropriate and the placement is the least restrictive environment for the student.

(G) The placement of more than one student, in the same residential facility, may be considered in the same on-site visit to a facility; however, the IEP of each student must be individually reviewed and a determination of appropriateness of placement and service must be made for each student.

(H) When a student who is residentially placed by a school district changes his residence to another Texas school district, and the student continues in the contracted placement, the school district which negotiated the contract shall be responsible for the residential contract for the remainder of the school year.

(b) Application approval process. Requests for approval of state and federal funding for residentially placed students shall be negotiated on an individual student basis through a residential application submitted by the school district to the TEA.

(1) A residential application may be submitted for educational purposes only. The residential application shall not be approved if the application indicates that the:

(A) placement is due primarily to the student's medical problems;

(B) placement is due primarily to problems in the student's home;

(C) district does not have a plan, including timelines and criteria, for the student's return to the local school program;

(D) district did not attempt to implement lesser restrictive placements prior to residential placement (except in emergency situations as documented by the student's ARD committee);

(E) placement is not cost effective when compared with other alternative placements; and/or

(F) residential facility provides unfundable/unapprovable services.

(2) The residential placement, if approved by the TEA, shall be funded as follows:

(A) the education cost of residential contracts shall be funded with state funds on the same basis as nonpublic day school contract costs according to Texas Education Code, §42.151;

(B) related services and residential costs for residential contract students shall be funded from a combination of fund sources. After expending any other available funds, the district must expend its local tax share per average daily attendance and 25% of its Individuals with Disabilities Education Act, Part B, (IDEA-B) formula tentative entitlement (or an equivalent amount of state and/or local

funds) for related services and residential costs. If this is not sufficient to cover all costs of the residential placement, the district through the residential application process may receive additional IDEA-B discretionary funds to pay the balance of the residential contract placement(s) costs; and

(C) funds generated by the formula for residential costs described in subsection (b)(2)(B) of this section shall not exceed the daily rate recommended by the Texas Department of Protective and Regulatory Services for the specific level of care in which the student is placed.

(c) Approval of the education program for facilities which provide educational services. Residential facilities which provide educational services must have their educational programs approved for contracting purposes by the commissioner of education.

(1) If the education program of a residential facility which is not approved by the commissioner of education is being considered for a residential placement by a local school district, the school district should notify the TEA in writing of its intent to place a student at the facility. The TEA shall begin approval procedures and conduct an on-site visit to the facility within 30 calendar days after the TEA has been notified by the local school district. Approval of the education program of a residential facility may be for one, two, or three years.

(2) The commissioner of education shall renew approvals and issue new approvals only for those facilities which have contract students already placed or which have a pending request for residential placement from a school district. This approval does not apply to residential facilities which only provide related services or residential facilities in which the local accredited school district where the facility is located provides the educational program.

(3) School districts which contract for out-of-state residential placement shall do so in accordance with the rules for in-state residential placement in this section, except that the facility must be approved by the appropriate agency in the state in which the facility is located, rather than by the commissioner of education in Texas.

TEC §29.012. Residential Facilities

(a) Except as provided by Subsection (b)(2), not later than the third day after the date a person 22 years of age or younger is placed in a residential facility, the residential facility shall:

(1) if the person is three years of age or older, notify the school district in which the facility is located, unless the facility is an open-enrollment charter school; or

(2) if the person is younger than three years of age, notify a local early intervention program in the area in which the facility is located.

(b) An agency or political subdivision that funds, licenses, certifies, contracts with, or regulates a residential facility must:

(1) require the facility to comply with Subsection (a) as a condition of the funding, licensing, certification, or contracting; or

(2) if the agency or political subdivision places a person in a residential facility, provide the notice under Subsection (a) for that person.

(c) For purposes of enrollment in a school, a person who resides in a residential facility is considered a resident of the school district or geographical area served by the open-enrollment charter school in which the facility is located.

(c-1) The commissioner by rule shall require each school district and open-enrollment charter school to include in the district's or school's Public Education Information Management System (PEIMS) report the number of children with disabilities residing in a residential facility who:

(1) are required to be tracked by the Residential Facility Monitoring (RFM) System; and

(2) receive educational services from the district or school.

SECTION 2. This Act applies beginning with the 2017-2018 school year.

SECTION 3. This Act takes effect only if a specific appropriation for the implementation of the Act is provided in a general appropriations act of the 85th Legislature.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

(d) The Texas Education Agency, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Services, the Texas Department of Health, the Department of Protective and Regulatory Services, the Interagency Council on Early Childhood Intervention, the Texas Commission on Alcohol and Drug Abuse, the Texas Juvenile Probation Commission, and the Texas Youth Commission by a cooperative effort shall develop and by rule adopt a memorandum of understanding. The memorandum must:

(1) establish the respective responsibilities of school districts and of residential facilities for the provision of a free, appropriate public education, as required by the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.) and its subsequent amendments, including each requirement for children with disabilities who reside in those facilities;
(2) coordinate regulatory and planning functions of the parties to the memorandum;
(3) establish criteria for determining when a public school will provide educational services;
(4) provide for appropriate educational space when education services will be provided at the residential facility;
(5) establish measures designed to ensure the safety of students and teachers; and
(6) provide for binding arbitration consistent with Chapter 2009, Government Code, and Section 154.027, Civil Practice and Remedies Code.

(e) This section does not apply to a residential treatment facility for juveniles established under Section 221.056, Human Resources Code.

(f) Except as provided by Subsection (g), a residential facility shall provide to a school district or open-enrollment charter school that provides educational services to a student placed in the facility any information retained by the facility relating to:
(1) the student's school records, including records regarding:
(A) special education eligibility or services;
(B) behavioral intervention plans;
(C) school-related disciplinary actions; and;
(D) other documents related to the student's educational needs;
(2) any other behavioral history information regarding the student that is not confidential under another provision of law; and:
(3) the student's record of convictions or the student's probation, community supervision, or parole status, as provided to the facility by a law enforcement agency, local juvenile probation department or juvenile parole office, community supervision and corrections department, or parole office, if the information is needed to provide educational services to the student.

(g) Subsection (f) does not apply to a:
(1) juvenile pre-adjudication secure detention facility; or
(2) juvenile post-adjudication secure correctional facility.

SECTION 2. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

The Wood County SSA will follow the federal and state rules as well as the agency MOU agreements in serving students with disabilities in the residential facilities located within our district boundaries. The MOU agreements will be reviewed annually. The MOU requirements are located in Section 8 of this Operating Guidelines document. The following are additional local clarification and guidelines:

1. ***Residential Facilities Specialist:*** *For purposes of compliance, quality and continuity, the WCSESSA special education department will designate RF job responsibilities and oversight to one district employee. That identified person will be the district designee to maintain communication and compliance oversight with the RF within the district boundaries. Systematic documentation will be maintained annually by the WCSESSA special education department designee. This documentation will include a 3 ring binder with individual sections for each RF within the attendance boundary. The RF designee will maintain the MOU, contact logs, RF meeting Agenda and minutes, correspondence copies, child find/ referral logs, sample referral packet, procedures and local guidelines, sample documentation forms and any other pertinent information.*

2. ***Child Find:*** *Annually, in January, the WCSESSA will determine licensed / accredited agencies and obtain updated contact information. A survey (by phone, fax or email) will be conducted to determine the student population served. The district will conduct annual training for the RF staff regarding the guidelines for enrollment and referral. Agendas and attendance will be kept in documentation notebook by WCSESSA.*

3. ***Enrollment Guidelines:*** *Any MOU requirements will be followed. A designee from each RF will provide information to the WCSESSA designee upon student enrollment in the RF. A disposition upon enrollment is made of previous general education or previous special education. Also documentation will be kept if the student enrolling is a current WCSESSA student or a non-WCSESSA enrolling student. For school age students, the enrollment information is shared with the WCSESSA designated RF specialist. Education services are not to be interrupted for any student enrolling in a RF. The RF is responsible for providing the*

following information: withdrawal from previous district, birth certificate or other proof of identity, student registration, medical history and records, parent approval of participation, student enrollment form, student directory information, parent survey of home language, transcript of working document, ARD/IEP records, if receiving services.
Determine :
a. general education system delivery / non special education student
b. special education referral and evaluation needed (in lieu of previous campus interventions – the 504 committee may also be a consideration) – Determination of need for surrogate parent will have been made and guidelines followed for training or documentation of previous training. Follow all federal and state rules for provision of Procedural Safeguards, Notice and Consent for Evaluation and Notice of ARD Committee Meeting.
c. current special education student previously non - WCSESSA resident (follow state rules for Temporary Transfer students) - Section 4 of this Operating Guidelines document
d. current special education student currently in WCSESSA schools (change of placement ARD)

4. ***Referral and Evaluation:*** *Determination of Disability and Eligibility for Special Education Services MOU requirements will be followed. Upon enrollment in the RF, the student will receive general education services pending completion of the referral and evaluation process. Upon determination of previous special education services, the special education state rules will be followed as previously stated.*

5. ***Service Delivery:*** *If the student has a disability and meets eligibility criteria, follow the federal and state rules and the ARD/IEP recommendations. The ARD Committee will determine any special education, related services or supplementary aides and services necessary for the student to make progress in the general curriculum in the Least Restrictive Environment. If the ARD Committee determines the special education student should remain in general education, the TEKS/ISD curriculum will be implemented. If the student needs any accommodations in general education classes, those accommodations will be determined by the ARD Committee and specified in the IEP. All ARD-IEP requirements for all students with a disability are found in Section 4 of this Operating Guidelines document.*

§300.320 Definition of individualized education program.
(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include--
(1) A statement of the child's present levels of academic achievement and functional performance, including--
(i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;
(2) (i) A statement of measurable annual goals, including academic and functional goals designed to--
(A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
(B) Meet each of the child's other educational needs that result from the child's disability;
(ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
If the ARD Committee determines an alternate state assessment is appropriate, the ARD will develop short term objectives in addition to the measurable annual goals required in (2)(i) above.
Remaining portion of §300.320 is found in section 4 of the Operating Guidelines.

Also implement, if determined appropriate, any 504 adapted education, G/T, Bilingual / ESL, Dyslexia or other services.

Progress Monitoring: *Again, the federal and state rules will be followed for all students including those in a residential facility residing in the WCSESSA. Progress toward mastery of the goals and objectives will be documented and reported to the parent/guardian/adult student in the same timely manner as students who do not have a disability. Annual review of the IEP which includes placement in the least restrictive environment appropriate for the student will be conducted by the ARD Committee following all state and federal rules.*

*6. **Program Evaluation:** Continuous process of review using the following information:*

a. database of RF facilities within the attendance boundaries

b. documentation / data necessary for the enrollment process and communication between WCSESSA specialist and the RF contact designee.

c. differentiate the population of referred students residing in the RF and provide appropriate services including referral, evaluation, and instruction for all eligible students

d. appropriate education services are provided based on individual decisions – use logs, referral forms, report cards, mastery of IEP goals and objectives, STAAR, benchmark testing, classroom observations, etc.

e. compliance monitored through PDAS, teacher checklist, folder audits, AEIS / AYP data

B. Texas School for the Blind and Visually Impaired (TSBVI)

TEC §30.021. Purpose of Texas School for the Blind and Visually Impaired. (TSBVI)

(a) The Texas School for the Blind and Visually Impaired is a state agency established to serve as a special school in the continuum of statewide alternative placements for students who are 21 years of age or younger on September 1 of any school year and who have a visual impairment and who may have one or more other disabilities. The school is intended to serve students who require specialized or intensive educational or related services related to the visual impairment. The school is not intended to serve:

(1) students whose needs are appropriately addressed in a home or hospital setting or in a residential treatment facility; or

(2) students whose primary, ongoing needs are related to a severe or profound emotional, behavioral, or cognitive deficit.

(b) The school district in which a student resides is responsible for assuring that a free appropriate public education is provided to each district student placed in the regular school year program of the school and that all legally required meetings for the purpose of developing and reviewing the student's individualized educational program are conducted. If the school disagrees with a district's individualized education program committee recommendation that a student be evaluated for placement, initially placed, or continued to be placed at the school, the district or the school may seek resolution according to a procedure established by the commissioner or through any due process hearing to which the district or school is entitled under the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.).

C. Texas School for the Deaf (TSD)

TEC §30.051. Purpose of Texas School For the Deaf (TSD)

(a) The Texas School for the Deaf is a state agency established to provide educational services to persons who are 21 years of age or younger on September 1 of any school year and who are deaf or hard of hearing. The school shall provide:

(1) comprehensive educational services, on a day or residential basis;

(2) short-term services to allow a student to better achieve educational results from services available in the community; and

(3) services for any student who is deaf or hard of hearing and also has an additional disability and who requires a specialized support program but does not require a residential treatment facility.

TEC §30.057.Admission to Texas School for the Deaf (TSD)

(a) The Texas School for the Deaf shall provide services in accordance with Section 30.051 to any eligible student with a disability for whom the school is an appropriate placement if the student has been referred for admission:

(1) by the school district in which the student resides under the student's individualized education program;

(2) by the student's parent or legal guardian, or a person with legal authority to act in place of the parent or legal guardian, or the student, if the student is age 18 or older, at any time during the school year, if the referring person chooses the school as the appropriate placement for the student rather than the placement in the student's local or regional program recommended under the student's individualized education program; or

(3) by the student's parent or legal guardian through the student's admission, review, and dismissal or individualized family service plan committee, as an initial referral to special education for students who are three years of age or younger.

(b) The commissioner, with the advice of the school's governing board, shall adopt rules to implement this section. The rules adopted by the commissioner may address the respective responsibilities of a student's parent or

legal guardian or a person with legal authority to act in place of the parent or legal guardian, or the student, if age 18 or older, the school district in which the student resides, and the school.

D. Regional Day School Program for the Deaf (RDSPD)

TEC §30.083. Statewide Plan.

(a) The director of services shall develop and administer a comprehensive statewide plan for educational services for students who are deaf or hard of hearing, including continuing diagnosis and evaluation, counseling, and teaching. The plan shall be designed to accomplish the following objectives:

(1) providing assistance and counseling to parents of students who are deaf or hard of hearing in regional day school programs for the deaf and admitting to the programs students who have a hearing loss that interferes with the processing of linguistic information;

(2) enabling students who are deaf or hard of hearing to reside with their parents or guardians and be provided an appropriate education in their home school districts or in regional day school programs for the deaf;

(3) enabling students who are deaf or hard of hearing who are unable to attend schools at their place of residence and whose parents or guardians live too far from facilities of regional day school programs for the deaf for daily commuting to be accommodated in foster homes or other residential school facilities provided for by the agency so that those children may attend a regional day school program for the deaf;

(4) enrolling in the Texas School for the Deaf those students who are deaf or hard of hearing whose needs can best be met in that school and designating the Texas School for the Deaf as the statewide educational resource for students who are deaf or hard of hearing;

(5) encouraging students in regional day school programs for the deaf to attend general education classes on a part-time, full-time, or trial basis; and

(6) recognizing the need for development of language and communications abilities in students who are deaf or hard of hearing, but also calling for the use of methods of communication that will meet the needs of each individual student, with each student assessed thoroughly so as to ascertain the student's potential for communications through a variety of means, including through oral or aural means, fingerspelling, or sign language.

(b) The director of services may establish separate programs to accommodate diverse communication methodologies. Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

TEC §30.081 - TEC §30.086. *See Section 8 for Funding*

VI. INSTRUCTIONAL PROGRAMS / SERVICE DELIVERY

§300.110 Program options.
The State must ensure that each public agency takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.
(Authority: 20 U.S.C. 1412(a)(2), 1413(a)(1))

A. Adapted Physical Education

§300.108 Physical education.
The TEA must ensure that public agencies in the State comply with the following:
(a) General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the WCSESSA enrolls children without disabilities and does not provide PE to children without disabilities in the same grades.
(b) Regular physical education. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless--
(1) The child is enrolled full time in a separate facility; or
(2) The child needs specially designed physical education, as prescribed in the child's IEP.
(c) Special physical education. If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs.
(d) Education in separate facilities. The public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this section.
(Authority: 20 U.S.C. 1412(a)(5)(A))

Physical Education services, specially designed where necessary, will be provided as an integral part of the educational program of each student with disabilities. The ARD/IEP committee should consider three options when making decisions about the physical education needs of students with disabilities. These decisions must be based on an adapted physical education evaluation.

1. The APE evaluation will provide the ARD/IEP committee with the following information:
a. identification of student's problems,
b. identification of areas of competencies,
c. documentation of the student's need for adapted physical education.

2. Regular Physical Education with No Modifications or Accommodations
NOTE: An adapted physical education evaluation is not necessary when the student with disabilities can participate in regular physical education with no modifications or accommodations.

3. Regular Education with Accommodations
Regular PE should be considered when accommodations would make it possible for the student with disabilities to be successful in a regular physical education program. The specific accommodations must be described in the student's IEP. It would be the responsibility of the special education teacher to assist the regular physical education teacher with accommodations for the student and to monitor the progress of the student.

4. Adapted Physical Education
a. An adapted physical education program with IEP objectives should be provided when the adapted physical education evaluation determines that the student cannot be successful in a regular physical education class with modifications. When the ARD/IEP committee has made the recommendation and the arrangements are specified in the student's IEP, physical education for the students with disabilities may be provided by the following personnel:
1. special education instructional or related service personnel who have the necessary skills and knowledge;
2. physical education teachers;
3. occupational therapist;

4. physical therapist;
5. occupational therapy assistant or physical therapy assistant working under supervision in accordance with the standards of their profession.

b. When these services are provided by special education personnel, the WCSESSA must document that they have the necessary skills and knowledge. Documentation may include, but not be limited to, in-service records, evidence of attendance at seminars or workshops, and/or transcripts of college courses.

c. If specially designed physical education is prescribed in a student's IEP, the WCSESSA will provide the services directly or make arrangements for those services to be provided through other public or private programs.

d. If WCSESSA enrolls a student with a disability into a facility, WCSESSA ensures that the student receives appropriate physical education services.

TEC §33.093. RECOGNITION OF PARTICIPATION IN SPECIAL OLYMPICS.

If a school district allows high school students to earn a letter for academic, athletic, or extracurricular achievements, the district must allow high school students in the district to earn a letter on the basis of a student's participation in a Special Olympics event.

SECTION 2. This Act applies beginning with the 2017-2018 school year.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

B. Behavior Improvement Classes

The WCSESSA will provide specialized instructional strategies and incorporate a behavioral level system for those students whose ARD/IEP Committee determine a more restrictive placement is appropriate due to behavioral needs.

C. Content Mastery Program Overview

The Content Mastery Center is designed to assist students with achieving appropriate grade level TEKS. The Content Mastery teacher collaborates with the general education teacher to provide the necessary supports for the student to be successful.

The Content Mastery Teacher will be proactive - obtaining lesson plans, materials, etc., ahead of time to plan a quality support system for both the general education teacher and the student. Increased stimulus variation is offered to students by utilizing as many different strategies as necessary to teach an objective.

1. There are two underlying principles of the program that are essential to its success:
a. Students with disabilities can learn and succeed in the mainstream with appropriate accommodations and support.
b. To be successful in the mainstream, the special student may need support in core and elective classes as appropriate.

2. Services may include (if adopted by the student's ARD committee), but are not restricted to the following:
a. taped textbooks;
b. hi-lighted materials (textbooks, worksheets, etc.);
c. reading test to students and/or assisting teachers with test adaptation;
d. help with a packet, worksheet, written assignment, or anything involving textbooks;
e. study group for exams;
f. discussing individual student's strengths and weaknesses with regular teachers;
g. monitoring student progress and placement;
h. aiding in student organizational skills;
i. vocabulary files for general education courses;
j. supplementary materials for courses;
k. alternative work environment
l. modified materials; and
m. collaborative planning among general and special education teachers.

3. Examples of when the student may use the Content Mastery Center:

a. when working independently on a packet, written assignment, worksheet, or questions from the textbook;
b. when the student is assigned to read a chapter in class; or
c. when students are studying for a test or a test is being given.
*Note: It would **not** be appropriate for a student to leave the general education classroom during the teacher's direct instruction, class discussion, group work, lab, or a film.*

4. The time spent in the Content Mastery Center may vary from ten minutes to the entire class period, depending on what the student needs to accomplish. Recommended guidelines for general education teachers utilizing the Content Mastery Center for students placed into this setting:

a. Consistently Low Grades
If a student's grades are consistently low in a subject (70's or below), then the student needs to use the Content Mastery Center on a regular basis.

b. Poor Student Performance
The student's performance during the lesson cycle provides the most accurate assessment of appropriate use of Content Mastery. There are two critical checkpoints in the lesson cycle:
(a) check for understanding, and
(b) guided practice. If a student is experiencing academic difficulty at either of these two checks, then he/she should go to Content Mastery for a reteach.

c. Gaps in Student Skills
If the general education teacher and the content mastery teacher determine that a student is missing vital prerequisite skills for a lesson, then the student may need a "preteach" at some point in the lesson cycle for tomorrow's lesson. The most appropriate step for this to occur is during independent practice, which would need to be reduced in order for there to be adequate time for a "preteach".

d. Behavior. It is inappropriate to send a student to content mastery because of behavior problems unless so determined by ARD.

D. Co-teaching

Co-teaching occurs in the general education classroom and is one way of assisting with inclusive education and providing specially designed instruction in the general education classroom. The special education teacher works along side the regular education teacher and lessons are planned together. Both teach the subject together to a class of special and regular education students. Co-teaching supports academic diversity in the regular classroom and provides all students with access to the state curriculum. Preplanning occurs with both teachers contributing equally. Teachers who are co-teaching will identify the following:

1. Styles (Instructional and Discipline): hands-on doing experiments and using manipulatives, use the textbooks first and then supplement with experiments and manipulatives? How do you manage behaviors? What are discipline styles? What are your strengths and weaknesses?
2. Plan of action to address:
- *Scheduling*
- *Expected classroom behaviors*
- *Classroom procedures, such as class work and homework policies, turning in work*
- *Consequences of not following rules and procedures*
- *Grading*
- *Communication between home and school*

3. Students in special education belong to both educators, so the general educator must be informed about the IEP for each child.
4. Roles in talking with parents.

E. Early Childhood Intervention (ECI) – birth to 3 years *(see also Referral Section)*

For the Memorandum of Understanding (MOU) with the TEA, refer to the MOU in its entirety at:
http://tea.texas.gov/Academics/Special_Student_Populations/Special_Education/Programs_and_Services/Early_Transition_Memorandum_of_Understanding/

F. General Education Career and Technical Education (CTE)

TEC §75.1023. Provisions for Individuals who are Members of Special Populations.

(a) An individual who is a member of a special population as defined in 20 United States Code (USC) , §2302(29), shall be provided career and technical education in accordance with all applicable federal law and regulations, state statutes, and rules of the State Board of Education (SBOE) and commissioner of education.

(b) A student with a disability shall be provided career and technical education in accordance with the provisions of the Individuals with Disabilities Education Improvement Act (IDEA) of 2004, 20 USC §§1400-14910 , and implementing regulations, state statutes, and rules of the SBOE and commissioner of education relating to services to students with disabilities.

(c) A student with a disability shall 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 is unable to receive a free appropriate public education (educational benefit) in a regular career and technical 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 technical education for students with disabilities (CTED) programs.

(d) A student with a disability identified in accordance with provisions of Public Law 105-302 and the IDEA, is an eligible participant in career and technical education when the requirements of this subsection are met.

(1) The ARD committee shall include a representative from career and technical education, preferably the teacher, when considering initial or continued placement of a student in a career and technical education program. An ARD committee member, including a member described in this subsection, is not required to attend an ARD committee meeting if the conditions of 34 Code of Federal Regulations (CFR), §300.321(e)(1), regarding attendance, or 34 CFR, §300.321(e)(2), regarding excusal, have been met.

(2) Planning for students with disabilities shall be coordinated among career and technical education, special education, and state rehabilitation agencies and should include a coherent sequence of courses.

(3) The WCSESSA shall monitor to determine if the instruction being provided students with disabilities in career and technical education classes is consistent with the IEP developed for a student .

(4) A school district shall provide supplementary services that each student with a disability needs to successfully complete a career and technical education program, such as curriculum modification, equipment modification, classroom modification, supportive personnel, and instructional aids and devices.

(5) A school district shall help fulfill the transitional service requirements of the IDEA of 2004, 20 USC §§1400-1491o , and implementing regulations, state statutes, and rules of the commissioner of education for each student with a disability who is completing a coherent sequence of career and technical education courses.

(6) When determining placement in a career and technical education classroom, the ARD committee shall consider a student's graduation plan, the content of the IEP, including the consideration of transition services, 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 of 2004, 20 USC §§1400-14910, and its implementing regulations.

The ARD/IEP Committee will determine the individualized program needed for each student with disabilities placed in CTE classes. The case manager will collaborate with the CTE teacher regarding the IEP and instructional needs.

G. Homebound Program

Please see the Student Attendance Accounting Manual for detailed information on the following:

- Homebound Services for Students with Chronic Illness/Acute Health Problems
- Chronic Illness/Acute Health Problems Policy Requirements
- Pregnancy Related Services (PRS)
- Infants and Toddlers with AI/VI
- PPCD
- Homebound Funding and Documentation Requirement
- Transition from Homebound to the Classroom
- Transitioning Students with Chronic Illness between Homebound and the Classroom
- Career and Technology Education Funding Requirements
- others

The WCSESSA provides homebound instruction for special education students who are unable to attend school because of medical reasons.

1. It is the responsibility of the ARD/IEP committee to determine:

a. the curriculum that is appropriate for homebound instruction;

b. modifications of the student's schedule.

The general classroom teacher on the student's home campus determines academic course work for the special education homebound student in his/her class and will coordinate with the assigned

homebound teacher.

2. It is important for the ARD/IEP committee to explain to the parents that an adult must be present in the home when a homebound teacher is providing instruction.

3. Dismissal procedures for homebound students are outlined in the ARD/IEP committee meeting that initiates homebound instruction. A homebound student will return to school:

a. when the medical release from the physician indicates

b. when the medical report from the physician expires.

Homebound Program for Pregnant Students

Special Education eligibility and services do not change as a result of a student's becoming pregnant. During the periods the student is confined to the home or hospital bedside, either prenatal or postnatal, special education and related services should be provided in the homebound instructional setting.

To ensure that there is no break in special education services, the ARD committee should convene as soon as possible on verification of a student's pregnancy to determine how special education and related services will be provided in the homebound instructional arrangement during the period of confinement to the home or hospital bedside. The committee should –

- *consider any prenatal medical conditions (such as, but not limited to, gestational diabetes, high blood pressure, preterm labor, etc.)*
- *consider postpartum periods of pregnancy; and*
- *document in the IEP the change of placement and in the type/amount of services that should begin on receipt of the physician's note.*

H. Learning in Functional Environments (L.I.F.E.) or Work Based Learning (WBL)

The Learning in Functional Environments (L.I.F.E.) program is the name given to describe a service delivery option, which may be considered by the ARD/IEP committee. This instructional option provides state curriculum as well as a focus on training students in functional daily living skills with a strong vocational emphasis at the secondary level to prepare students for work in a supported employment environment when they leave school. The core academic curriculum areas of reading, writing, and mathematics are included as well as science and social studies with an emphasis on functional skills to become as independent as possible. The term Community-based Instruction (CBI) is a term used to describe teaching and learning the functional skills in the actual real environment of the community versus inside the classroom. Community-based Instruction is not a field trip; rather it is an instructional trip specifically to teach the goals and objectives of the IEP on a consistent basis in the real environments. A more current term to describe learning in real work environments is WBL or Work Based Learning.

I. Preschool Program for Children with Disabilities (PPCD)

The Preschool Program for Children with Disabilities ages three through five is offered on select elementary school campuses. Parents are encouraged to be active participants in all phases of the educational process. Instruction is based on an individual education plan that is determined after evaluation has been completed. There may be several instructional personnel working together for the benefit of the student. These staff members may include, but are not limited to, an educational diagnostician, speech pathologist, nurse, special education teacher, special education instructional aide, occupational and/or physical therapist. PPCD placement is based on evaluation, eligibility and the student's IEP.

J. Speech Therapy

The speech/language pathologist utilizes a service delivery system that has a range of services from least to most restrictive. An important component of this model is the option of providing service in general classroom through collaboration with the general education teacher. (Speech/language pathologist should be strongly encouraged to continue to implement this when appropriate for students.)

*The amount of therapy time set out in the IEP establishes that these services will be provided. Therefore, it is essential that therapy **not** be canceled. Careful planning is required to allow for ARD/IEP meetings and testing*

time. Missed therapy sessions must be made up if the student is involved in a school related activity or if the therapist is out ill or attending professional development.

1. Relative to ARD/IEP committee meetings, the speech pathologist:

a. should send home a DRAFT IEP at least one week prior to the ARD. A cover letter with name, conference time and phone number should accompany the IEP.

b. conducts ARDs for students with a "speech impairment only";

c. copy and distribute the accommodation checklist to all the student's teachers that are SI only.

d. should attend ARDs for students that have the SI label in addition to another disability.

2. Other responsibilities:

a. Full-time pathologists traditionally schedule a set time per week to use for testing, ARD/IEP committee meetings and paperwork.

b. Weekly Therapy logs and attendance logs shall be maintained by the speech/language therapist.

c. Our goal is for full-time therapists serve approximately 60 to 65 students per week. There may be circumstances in which this caseload is not possible.

d. Lesson plans should be used as a guide for the implementation of the IEP.

K. Vision Services

1. All arrangements for service for students with visual impairments are designed to help the student to be successful in his/her primary academic setting.

2. The visual impairment (VI) may be primary, secondary, or tertiary disability, and services from VI personnel will be implemented as determined by the ARD/IEP Committee. For every student receiving any type of vision service because of a certified visual impairment, the service assignments on the ARD/IEP form should include visual impairment. This may be in addition to other services or may be the only services the student receives.

3. Progress of the students will be reviewed by vision staff and any other instructors. For students with a visual impairment, the ARD/IEP Committees must include the VI teacher.

4. Staff assigned to work with students with visual impairments will have access to training and resources available through various agencies, including, but not limited to our local Regional Education Service Center (plus ESC 17), Texas School for the Blind and Visually Impaired (TSBVI), and Division for Blind Services (DBS) under Texas Department of Assistive and Rehabilitative Services (DARS).

L. Vocational Adjustment Class/Program

(See also E. Gen. Ed. CTE) Local as determined by ARD committee. The Vocational Adjustment Class (VAC) is a special education vocational program that is offered on the high school campus. This instructional arrangement is designed for students with disabilities who desire vocational training and are unable to make progress in general education CTE programs. The curriculum of the VAC program includes on-the-job training and frequent supervision at work sites in the community. Employment opportunities and training are based on vocational evaluation, student needs and abilities, teacher recommendations and parental preference.

Admission to the Vocational Adjustment Program is made by the Admission, Review and Dismissal (ARD/IEP) committee.

Community-Based Vocational Education (CBVE) delivers vocational education to students in typical community work settings rather than conventional school environments. Students engage in vocational exploration, assessment, and training experiences to assist in identifying career interests, assessing skills and training needs and developing the skills and attitudes necessary for paid, long-term employment.

Students in CBVE will work toward independent employment, as appropriate.

§300.177 States' sovereign immunity and positive efforts to employ and advance qualified individuals with disabilities.

(a) States' sovereign immunity.

(1) A State that accepts funds under this part waives its immunity under the 11th amendment of the Constitution of the United States from suit in Federal court for a violation of this part.

(2) In a suit against a State for a violation of this part, remedies (including remedies both at law and in equity) are available for such a violation in the suit against any public entity other than a State.

(3) Paragraphs (a)(1) and (a)(2) of this section apply with respect to violations that occur in whole or part after the date of enactment of the Education of the Handicapped Act Amendments of 1990.

(b) Positive efforts to employ and advance qualified individuals with disabilities. Each recipient of assistance under Part B of the Act must make positive efforts to employ, and advance in employment,

qualified individuals with disabilities in programs assisted under Part B of the Act.

The Special Education Department (including High School VAC's) in WCSESSA will work in cooperation with the district Personnel Office and Administration to carefully review job openings within the district. Consideration will be given to any qualified individual with disabilities to advance in employment. Examples of positive efforts may include providing employment vacancy information to organizations for persons with disabilities and conducting job fairs for persons with disabilities.

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Section 6. - DISCIPLINE SECTION

I. STUDENT CODE OF CONDUCT

§300.530 Authority of school personnel.

(a) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

TEC §37.001. STUDENT CODE OF CONDUCT.

(a) The board of trustees of an independent school district shall, with the advice of its district-level committee established under Subchapter F, Chapter 11, adopt a student code of conduct for the district. The student code of conduct must be posted and prominently displayed at each school campus or made available for review at the office of the campus principal. In addition to establishing standards for student conduct, the student code of conduct must:
  (1) specify the circumstances, in accordance with this subchapter, under which a student may be removed from a classroom, campus, or disciplinary alternative education program;
  (2) specify conditions that authorize or require a principal or other appropriate administrator to transfer a student to a disciplinary alternative education program;
  (3) outline conditions under which a student may be suspended as provided by Section 37.005 or expelled as provided by Section 37.007;
  (4) specify that consideration will be given, as a factor in each decision concerning suspension, removal to a disciplinary alternative education program, expulsion, or placement in a juvenile justice alternative education program, regardless of whether the decision concerns a mandatory or discretionary action, to:
    (A) self-defense;
    (B) intent or lack of intent at the time the student engaged in the conduct;
    (C) a student's disciplinary history; or
    (D) a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct;
    (E) a student's status in the conservatorship of the Department of Family and Protective Services; or;
    (F) a student's status as a student who is homeless;
  (5) provide guidelines for setting the length of a term of:
    (A) a removal under Section 37.006; and
    (B) an expulsion under Section 37.007;
  (6) address the notification of a student's parent or guardian of a violation of the student code of conduct committed by the student that results in suspension, removal to a disciplinary alternative education program, or expulsion;
  (7) prohibit bullying, harassment, and making hit lists and ensure that district employees enforce those prohibitions; and
  (8) provide, as appropriate for students at each grade level, methods, including options, for:
    (A) managing students in the classroom and on school grounds;
    (B) disciplining students; and
    (C) preventing and intervening in student discipline problems, including bullying, harassment, and making hit lists.

(b-1) The methods adopted under Subsection (a)(8) must provide that a student who is enrolled in a special education program under Subchapter A, Chapter 29, may not be disciplined for conduct prohibited in accordance with Subsection (a)(7) until an admission, review, and dismissal committee meeting has been held to review the conduct.

(b) In this section:
  (1) "Bullying" has the meaning assigned by Section 37.0832.
  (2) "Harassment" means threatening to cause harm or bodily injury to another student, engaging in sexually intimidating conduct, causing physical damage to the property of another student, subjecting another student to physical confinement or restraint, or maliciously taking any action that substantially harms another student's physical or emotional health or safety.

(3) "Hit list" means a list of people targeted to be harmed, using:
(A) a firearm, as defined by Section 46.01(3), Penal Code;
(B) a knife, as defined by Section 46.01(7), Penal Code; or
(C) any other object to be used with intent to cause bodily harm.
(4) "Student who is homeless" has the meaning assigned to the term "homeless children and youths" under 42 U.S.C. Section 11434a.

(c) Once the student code of conduct is promulgated, any change or amendment must be approved by the board of trustees.
(d) Each school year, the school district shall provide parents notice of and information regarding the student code of conduct.
(e) Except as provided by Section 37.007(e), this subchapter does not require the student code of conduct to specify a minimum term of a removal under Section 37.006 or an expulsion under Section 37.007.
Acts 2009, 81st Leg., R.S., Ch. 897 , Sec. 1, eff. June 19, 2009.
To read more on Bullying not included in this OG - look up local Policy based on TEC § 37.0832 and § 21.451(d)

The WCSESSA has adopted a positive behavioral support program/initiative and all campus staff receive annual training on the program.

OSEP Behavior Training technical assistance document Supporting and Responding to Behavior: Evidence Based Strategies for Teachers, http://www.txbehaviorsupport.org/Assets/osep-ebp-classroom-pbis-document-2015(1).pdf

TEC §37.0012. DESIGNATION OF CAMPUS BEHAVIOR COORDINATOR.
(a) A person at each campus must be designated to serve as the campus behavior coordinator. The person designated may be the principal of the campus or any other campus administrator selected by the principal.
(b) The campus behavior coordinator is primarily responsible for maintaining student discipline and the implementation of this subchapter.
(c) Except as provided by this chapter, the specific duties of the campus behavior coordinator may be established by campus or district policy. Unless otherwise provided by campus or district policy:
(1) a duty imposed on a campus principal or other campus administrator under this subchapter shall be performed by the campus behavior coordinator; and
(2) a power granted to a campus principal or other campus administrator under this subchapter may be exercised by the campus behavior coordinator.
(d) The campus behavior coordinator shall promptly notify a student's parent or guardian as provided by this subsection if under this subchapter the student is placed into in-school or out-of-school suspension, placed in a disciplinary alternative education program, expelled, or placed in a juvenile justice alternative education program or is taken into custody by a law enforcement officer. A campus behavior coordinator must comply with this subsection by:
(1) promptly contacting the parent or guardian by telephone or in person; and
(2) making a good faith effort to provide written notice of the disciplinary action to the student, on the day the action is taken, for delivery to the student's parent or guardian.
(e) If a parent or guardian entitled to notice under Subsection (d) has not been reached by telephone or in person by 5 p.m. of the first business day after the day the disciplinary action is taken, a campus behavior coordinator shall mail written notice of the action to the parent or guardian at the parent's or guardian's last known address.
(f) If a campus behavior coordinator is unable or not available to promptly provide notice under Subsection (d), the principal or other designee shall provide the notice.

TEC §37.0013. POSITIVE BEHAVIOR PROGRAM.
(a) Each school district and open-enrollment charter school may develop and implement a program, in consultation with campus behavior coordinators employed by the district or school and representatives of a regional education service center, that provides a disciplinary alternative for a student enrolled in a grade level below grade three who engages in conduct described by Section 37.005(a) and is not subject to Section 37.005(c). The program must:
(1) be age-appropriate and research-based;
(2) provide models for positive behavior;
(3) promote a positive school environment;
(4) provide alternative disciplinary courses of action that do not rely on the use of in-school suspension, out-of-school suspension, or placement in a disciplinary alternative education program to manage student

behavior; and

(5) provide behavior management strategies, including:

(A) positive behavioral intervention and support;

(B) trauma-informed practices;

(C) social and emotional learning;

(D) a referral for services, as necessary; and

(E) restorative practices.

(b) Each school district and open-enrollment charter school may annually conduct training for staff employed by the district or school on the program adopted under Subsection (a).

II. CHANGE OF PLACEMENT DECISIONS – Change of Placement Analysis

The local campus administrator is responsible for maintaining records on student discipline. Students with disabilities must be monitored by the local campus for total number of removals in order to follow state and federal disciplinary requirements outlined in this section.

***Change of Placement Analysis* § 300.530 (b,c,d)** *[§300.530 in full on page 619]*
When a principal or other appropriate administrator recommends disciplinary removal from the student's current IEP placement, conduct a Change of Placement Analysis.

(a) Count the days of disciplinary removal from the student's current educational placement.
- *1. Portions of a school day that a child had been suspended would be included in determining whether the child had been removed for more than 10 cumulative school days or subjected to a change of placement.*
- *2. An in-school suspension would not be considered a part of the days of suspension as long as the child is afforded the opportunity to:*
  - *a. Appropriately progress in the general curriculum,*
  - *b. Continue to receive the services specified on his or her IEP, and*
  - *c. Continue to participate with nondisabled children to the extent they would have in their current placement*
- *3. Whether a bus suspension would count as a day of suspension would depend on whether the bus transportation is a part of the child's IEP.*
  - *a. If the bus transportation is a part of the child's IEP, a bus suspension would be treated as a suspension unless the WCSESSA provides the bus service in some other way.*
  - *b. If the bus transportation is not a part of the child's IEP, a bus suspension would not be a suspension.*

(b) Determine whether the disciplinary removal(s) constitute(s) a change of placement. A disciplinary change of placement occurs if:
- *1. The removal is for more than 10 consecutive school days, or*
- *2. The student is subject to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year and because of factors such as the length of each removal, the total amount of time the student is removed and the proximity of the removals to one another.*

A. Less than 10 School Day Removals

(a) The WCSESSA is not required to provide services for removal of a student with a disability who has been removed from the current placement for 10 school days or less in that school year, if services are not provided to a student without disabilities who has been similarly removed.
(b) The WCSESSA may choose to provide the IEP services to the student with disabilities during any short term removal to ISS in order to prevent counting those days of removal toward the 10 cumulative.
(c) In the case of a student whose behavior impedes his or her learning or that of others, convene an ARD meeting, if appropriate, to consider completing an FBA/BIP including positive behavior interventions, strategies, and supports to address that behavior.

B. More than 10 School Day Removals

1. Consecutive or Cumulative – Pattern

§300.536 Change of placement because of disciplinary removals.
(a) For purposes of removals of a child with a disability from the child's current educational placement under §§300.530 through 300.535, a change of placement occurs if--
- **(1) The removal is for more than 10 consecutive school days; or**
- **(2) The child has been subjected to a series of removals that constitute a pattern--**
  - **(i) Because the series of removals total more than 10 school days in a school year;**
  - **(ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals, and**

(iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

(b) (1) The WCSESSA determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

(2) This determination is subject to review through due process and judicial proceedings. (Authority: 20 U.S.C. 1415(k))

Additional (beyond 10 cumulative days in a school year) short-term removals (of 10 consecutive days or less) for separate incidents of misconduct, are permitted, to the extent removals would be applied to nondisabled students (as long as those removals do not constitute a Change of Placement described in 300.536 above).

An ARD/IEP Committee will:

(a) consider special education and disciplinary records of the student with a disability prior to the final determination regarding the disciplinary action;

(b) review the student's BIP and its implementation to determine if accommodations / modifications are necessary;

(c) consult with one or more of the child's teachers determine the extent to which services are needed and the location 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.

(d) If the WCSESSA initiates disciplinary procedures applicable to all students, the special education and disciplinary records of the student with a disability are transmitted for consideration by the person or persons making the final determination regarding disciplinary action.

2. Manifestation Determination

If a disciplinary removal constitutes a change in placement, within 10 school days of any decision to change the placement because of a violation of a code of student conduct, the WCSESSA must convene an ARD/IEP meeting to conduct a manifestation determination and address the two questions in §300.530(e)(1) below.

§300.530 Authority of school personnel.

(e) Manifestation determination.

(1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the WCSESSA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine--

(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(ii) If the conduct in question was the direct result of the WCSESSA's failure to implement the IEP.

(2) The conduct must be determined to be a manifestation of the child's disability if the WCSESSA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.

- *Previously, any tangential or attenuated relationship between the discipline infraction and the child's disability was sufficient to determine that the infraction was a "manifestation" of the child's disability. In IDEA 2004, the House Committee FAQ says to be a manifestation "it is the intention that the conduct in question was caused by, or has a direct and substantial relationship to the child's disability, and is not an attenuated association or mere correlation, such as low self-esteem, to the child's disability."*
- *Relevant Members of the IEP Team: depending on the type of discipline infraction, when the infraction occurred and who was present, some members of the IEP Team may not be relevant to the discussion of the discipline event. Nonetheless, in each instance the relevant members should be determined in collaboration by the parents and the WCSESSA.*

(3) If the LEA, the parent and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.

(f) Determination that behavior was a manifestation. If the WCSESSA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must--

(1) Either--

(i) Conduct a functional behavioral assessment, unless the WCSESSA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

(ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

(g) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child --

(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;

(2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or

(3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

If the student's ARD committee agrees that additional assessment is indicated, Federal Guidelines stipulate required timelines. If the student's ARD committee agrees that there is a need for a functional behavior assessment, the committee may determine that there is enough data to complete the assessment at the ARD. If there is insufficient data to complete the assessment at the ARD, the ARD committee determines the timeline for the assessment(s) to be completed, which may be more than 10 days if warranted.

3. FBA (Functional Behavioral Assessment) / Behavior Intervention Plan (BIP)

§300.324 Development, review, and revision of IEP

(a) (2) Consideration of special factors. The IEP Team must--

(i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

http://www.txbehaviorsupport.org/

The IEP committee is required to 'consider the use of positive behavioral interventions and supports, and other strategies to address that behavior' if the child's behavior impedes his or her learning or that of others. The final decision on interventions, strategies and supports is left to the IEP committee. Additional resources include the Texas Behavior Support Initiative (TBSI) and the TEA statewide project Texas Collaborative for Emotional Development in Schools.

§300.530 Authority of school personnel.

(d) Services.

(1) A child with a disability who is removed from the child's current placement pursuant to paragraph (c) or (g) of this section must--

(i) Continue to receive educational services, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(2) for (d)(2,3,4,5) *see this section 6 FAPE for Students Removed*

The Functional Behavioral Assessment (FBA) must be completed when:
** removal is more than 10 school days due to any other violation of code (FBA to prevent recurrence)*
** removals due to drugs, weapons or serious bodily injury*
** if behavior is a manifestation(unless FBA/BIP is already in place / then review, revise as needed)*

Ensure the relevant members (including the general education teacher) participate in providing information for the FBA and develop the BIP:

1. *target the specific behavior that is impeding learning by clearly defining and describing the observable behavior(s).*
2. *obtain information from a variety of sources including but not limited to: discussions, interviews, records, and direct observation. Also use any standardized instruments if available. Determine duration, frequency, and intensity of any patterns of behavior.*
3. *identify and describe any antecedents - events that logically serve as the stimulus for the behavior.*
4. *identify and describe any consequences - this is the action that is following and causes the student to maintain specific behavior - determine effectiveness of each.*
5. *determine the purpose of the student's behavior - usually to get something, avoid or escape something, or to control the antecedent event.*
6. *describe the relationship of the behavior to the event and provide possible variables that can be changed in the setting or the situation.*
7. *develop the behavioral intervention plan and accommodations (BIP). Teach alternatives to the behavior and include positive reinforcement along with consequences.*
8. *consistently implement, allow enough time for the behavioral intervention plan and accommodations to work, and then review as needed.*

See also Section 2. FBA and Section 7. Consent

Click link to review the Region 4 ESC Behavior Support Initiative Sstatewide Function which TEA supports.
http://www.txbehaviorsupport.org/

C. Placement made by ARD/IEP Committee

TEC §37.004. Placement of Students with Disabilities

(a) 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 committee.

(b) 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 admission, review, and dismissal committee conducts a manifestation determination review under 20 U.S.C. Section 1415(k)(4) and its subsequent amendments. Any disciplinary action regarding the student shall 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.

(c) A student with a disability who receives special education services may not be placed in alternative education programs solely for educational purposes.

(d) A teacher in an alternative education program under Section 37.008 who has a special education assignment must hold an appropriate certificate or permit for that assignment.

TAC §89.1050. The Admission, Review and Dismissal Committee.

(j) All disciplinary actions regarding students with disabilities must be determined in accordance with 34 CFR, §§300.101(a) and 300.530-300.536; TEC, Chapter 37, Subchapter A; and §89.1053 of this title (relating to Procedures for Use of Restraint and Time-Out).

§300.101 Free appropriate public education (FAPE) is found in Section 8. You may also refer to TEA Discipline and School Removals:
http://tea.texas.gov/Academics/Special_Student_Populations/Special_Education/Programs_and_Services/State_Guidance/Discipline_and_School_Removals/

The WCSESSA will follow all state and federal rules regarding placement of students with disabilities in the least restrictive placement appropriate to meet their individual needs.

III. REMOVALS OF STUDENTS WITH DISABILITIES

To read the entire text of Chapter 37, see: https://statutes.capitol.texas.gov/Docs/ED/htm/ED.37.htm

Student level data will be reviewed annually to identify any patterns or trends in disciplinary removals. Patterns or trends identified will assist the WCSESSA to develop and target staff training. Examples of patterns to look for are disproportionality of specific disabilities, grade levels, campuses, gender, ethnicity, etc.

A. Teacher Removal

TEC §37.002. Removal by Teacher

(a) A teacher may send a student to the campus behavior coordinator's office to maintain effective discipline in the classroom. The campus behavior coordinator shall respond by employing appropriate discipline management techniques consistent with the student code of conduct adopted under Section 37.001 that can reasonably be expected to improve the student's behavior before returning the student to the classroom. If the student's behavior does not improve, the campus behavior coordinator shall employ alternative discipline management techniques, including any progressive interventions designated as the responsibility of the campus behavior coordinator in the student code of conduct.

(b) A teacher may remove from class a student:
  (1) who has been documented by the teacher to repeatedly interfere with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn; or
  (2) whose behavior the teacher determines is so unruly, disruptive, or abusive that it seriously interferes with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn.

(c) If a teacher removes a student from class under Subsection (b), the principal may place the student into another appropriate classroom, into in-school suspension, or into a disciplinary alternative education program as provided by Section 37.008. The principal may not return the student to that teacher's class without the teacher's consent unless the committee established under Section 37.003 determines that such placement is the best or only alternative available. The terms of the removal may prohibit the student from attending or participating in school-sponsored or school-related activity.

(d) A teacher shall remove from class and send to the principal for placement in a disciplinary alternative education program or for expulsion, as appropriate, a student who engages in conduct described under Section 37.006 or 37.007. The student may not be returned to that teacher's class without the teacher's consent unless the committee established under Section 37.003 determines that such placement is the best or only alternative available.

Special Education teachers in the WCSESSA will follow the ARD/IEP process for any consideration of placement in the resource or self-contained classroom.

TEC §37.003. Placement Review Committee

(a) Each school shall establish a three-member committee to determine placement of a student when a teacher refuses the return of a student to the teacher's class and make recommendations to the district regarding readmission of expelled students. Members shall be appointed as follows:
  (1) the campus faculty shall choose two teachers to serve as members and one teacher to serve as an alternate member; and
  (2) the principal shall choose one member from the professional staff of a campus.

(b) The teacher refusing to readmit the student may not serve on the committee.

(c) The committee's placement determination regarding a student with a disability who receives special education services under Subchapter A, Chapter 29, is subject to the requirements of the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.) and federal regulations, state statutes, and agency requirements necessary to carry out federal law or regulations or state law relating to special education.

TEC §37.0181 Professional Development Regarding Disciplinary Procedures

(a) Each principal or other appropriate administrator who oversees student discipline shall, at least once every three school years, attend professional development training regarding this subchapter, including training relating to the distinction between a discipline management technique used at the principal's discretion under

Section 37.002(a) and the discretionary authority of a teacher to remove a disruptive student under Section 37.002(b).

(b) Professional development training under this section may be provided in coordination with regional education service centers through the use of distance learning methods, such as telecommunications networks, and using available agency resources. The Texas Behavior Support Initiative (Region 4 ESC) provides training and products for ESC and child-serving agency network representatives to use in professional development and technical assistance activities with districts and charter schools and child-serving agencies. The goal is to create a positive behavior support system in the Texas public schools that helps students with disabilities receive special education supports and services in the least restrictive environment and to participate successfully in the TEKS-based curriculum and state assessment system. http://www.txbehaviorsupport.org/

B. ISS – In School Suspension

(a) The local campus administrator is responsible for maintaining records on student discipline. Students with disabilities must be monitored by the local campus for total number of removals in order to follow state and federal disciplinary requirements outlined in this section.

(b) Follow section II. Change of Placement found in this Section 6. DISCIPLINE.

C. Suspension

TEC §37.005. Suspension.

(a) The principal or other appropriate administrator may suspend a student who engages in conduct identified in the student code of conduct adopted under Section 37.001 as conduct for which a student may be suspended.

(b) A suspension under this section may not exceed three school days.

(c) A student who is enrolled in a grade level below grade three may not be placed in out-of-school suspension unless while on school property or while attending a school-sponsored or school-related activity on or off of school property, the student engages in:

(1) conduct that contains the elements of an offense related to weapons under Section 46.02 or 46.05, Penal Code;

(2) conduct that contains the elements of a violent offense under Section 22.01, 22.011, 22.02, or 22.021, Penal Code; or

(3) selling, giving, or delivering to another person or possessing, using, or being under the influence of any amount of:

(A) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.;

(B) a dangerous drug, as defined by Chapter 483, Health and Safety Code; or

(C) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code.

(d) A school district or open-enrollment charter school may not place a student who is homeless in out-of-school suspension unless the student engages in conduct described by Subsections (c)(1)-(3) while on school property or while attending a school-sponsored or school-related activity on or off of school property. The campus behavior coordinator may coordinate with the school district's homeless education liaison to identify appropriate alternatives to out-of-school suspension for a student who is homeless. In this subsection, "student who is homeless" has the meaning assigned to the term "homeless children and youths" under 42 U.S.C. Section 11434a.

TEC §33.081. Extracurricular Activities.

(e) Suspension of a student with a disability that significantly interferes with the student's ability to meet regular academic standards must be based on the student's failure to meet the requirements of the student's individualized education program. The determination of whether a disability significantly interferes with a student's ability to meet regular academic standards must be made by the student's admission, review, and dismissal committee. For purposes of this subsection, "student with a disability" means a student who is eligible for a district's special education program under Section 29.003(b).

(f) A student suspended under this section may practice or rehearse with other students for an extracurricular activity but may not participate in a competition or other public performance.

(g) An appeal to the commissioner is not a contested case under Chapter 2001, Government Code, if the issues presented relate to a student's eligibility to participate in extracurricular activities, including issues related to the student's grades or the WCSESSA's grading policy as applied to the student's eligibility. The commissioner may delegate the matter for decision to a person the commissioner designates. The decision of

the commissioner or the commissioner's designee in a matter governed by this subsection may not be appealed except on the grounds that the decision is arbitrary or capricious. Evidence may not be introduced on appeal other than the record of the evidence before the commissioner.

§300.170 Suspension and expulsion rates.

(a) General. The SEA must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities--

(1) Among LEAs in the State; or

(2) Compared to the rates for nondisabled children within those agencies.

(b) Review and revision of policies. If the discrepancies described in paragraph (a) of this section are occurring, the SEA must reviews and, if appropriate, revises (or requires the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act. (Authority: 20 U.S.C. 1412(a)(22))

D. IAES - (Interim Alternative Educational Setting) Removals for Drugs, Weapons, Serious Bodily Injury

45 School Day Rule *{administrator may take action regardless of the Manifestation Determination if behavior is a result of 3 specific situations listed below §300.530 (g)}*

§300.530 Authority of school personnel.

(g) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child--

(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;

(2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or

(3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

(h) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in §300.504.

(i) Definitions. For purposes of this section, the following definitions apply:

(1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(2) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(3) Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

(4) Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code. (Authority: 20 U.S.C. 1415(k)(1) and (7))

§300.531 Determination of setting.

The child's IEP Team determines the interim alternative educational setting for services under §300.530(c), (d)(5) and (g) *(found on page 619).* **(Authority: 20 U.S.C. 1415(k)(2))**

The ARD committee will assure that the student will receive appropriate services in the IAES assigned. There is nothing in the regulations that mandate the WCSESSA must have multiple possible interim alternative educational

settings.

DAEP (Disciplinary Alternative Education Programs)

TEC §37.008. Disciplinary Alternative Education Programs (DAEP)

(a) The LEA shall provide a disciplinary alternative education program that:
- (1) is provided in a setting other than a student's regular classroom;
- (2) is located on or off of a regular school campus;
- (3) provides for the students who are assigned to the disciplinary alternative education program to be separated from students who are not assigned to the program;
- (4) focuses on English language arts, mathematics, science, history, and self-discipline;
- (5) provides for students' educational and behavioral needs;
- (6) provides supervision and counseling;
- (7) requires that to teach in an off-campus disciplinary alternative education program, each teacher meet all certification requirements established under Subchapter B, Chapter 21; and
- (8) notwithstanding Subdivision (7), requires that to teach in a disciplinary alternative education program of any kind, each teacher employed by a school district during the 2003-2004 school year or an earlier school year meet, not later than the beginning of the 2005-2006 school year, all certification requirements established under Subchapter B, Chapter 21.

(a-1) The TEA shall adopt minimum standards for the operation of disciplinary alternative education programs, including standards relating to:
- (1) student/teacher ratios;
- (2) student health and safety;
- (3) reporting of abuse, neglect, or exploitation of students;
- (4) training for teachers in behavior management and safety procedures; and
- (5) planning for a student's transition from a disciplinary alternative education program to a regular campus.

(b) A disciplinary alternative education program may provide for a student's transfer to:
- (1) a different campus;
- (2) a school-community guidance center; or
- (3) a community-based alternative school.

(c) An off-campus disciplinary alternative education program is not subject to a requirement imposed by this title, other than a limitation on liability, a reporting requirement, or a requirement imposed by this chapter or by Chapter 39.

(d) A school district may provide a disciplinary alternative education program jointly with one or more other districts.

(e) The LEA shall cooperate with government agencies and community organizations that provide services in the district to students placed in a disciplinary alternative education program.

(f) A student removed to a disciplinary alternative education program is counted in computing the average daily attendance of students in the district for the student's time in actual attendance in the program.

(g) The WCSESSA shall allocate to a disciplinary alternative education program the same expenditure per student attending the disciplinary alternative education program, including federal, state, and local funds, that would be allocated to the student's school if the student were attending the student's regularly assigned education program, including a special education program.

(h) The LEA may not place a student, other than a student suspended as provided under Section 37.005 or expelled as provided under Section 37.007, in an unsupervised setting as a result of conduct for which a student may be placed in a disciplinary alternative education program.

(i) On request of a school district, a regional education service center may provide to the district information on developing a disciplinary alternative education program that takes into consideration the district's size, wealth, and existing facilities in determining the program best suited to the district.

(j) If a student placed in a disciplinary alternative education program enrolls in another school district before the expiration of the period of placement, the board of trustees of the district requiring the placement shall provide to the district in which the student enrolls, at the same time other records of the student are provided, a copy of the placement order. The district in which the student enrolls may continue the disciplinary alternative education program placement under the terms of the order or may allow the student to attend regular classes without completing the period of placement. A district may take any action permitted by this subsection if:
- (1) the student was placed in a disciplinary alternative education program by an open-enrollment charter school under Section 12.131 and the charter school provides to the district a copy of the placement order; or

(2) the student was placed in a disciplinary alternative education program by a school district in another state and:
(A) the out-of-state district provides to the district a copy of the placement order; and
(B) the grounds for the placement by the out-of-state district are grounds for placement in the district in which the student is enrolling.

(j-1) If a student was placed in a disciplinary alternative education program by a school district in another state for a period that exceeds one year and a school district in this state in which the student enrolls continues the placement under Subsection (j), the district shall reduce the period of the placement so that the aggregate period does not exceed one year unless, after a review, the district determines that:
(1) the student is a threat to the safety of other students or to district employees; or
(2) extended placement is in the best interest of the student.

(k) A program of educational and support services may be provided to a student and the student's parents when the offense involves drugs or alcohol as specified under Section 37.006 or 37.007. A disciplinary alternative education program that provides chemical dependency treatment services must be licensed under Chapter 464, Health and Safety Code.

(l) The LEA is required to provide in the district's disciplinary alternative education program a course necessary to fulfill a student's high school graduation requirements only as provided by this subsection. The LEA shall offer a student removed to a disciplinary alternative education program an opportunity to complete coursework before the beginning of the next school year. The LEA may provide the student an opportunity to complete coursework through any method available, including a correspondence course, distance learning, or summer school. The district may not charge the student for a course provided under this subsection.

(l-1) The LEA will provide the parents of a student removed to a disciplinary alternative education program with written notice of the district's obligation under Subsection (l) to provide the student with an opportunity to complete coursework required for graduation. The notice must:
(1) include information regarding all methods available for completing the coursework; and
(2) state that the methods are available at no cost to the student.

(m) The commissioner shall adopt rules necessary to evaluate annually the performance of each district's disciplinary alternative education program established under this subchapter. The evaluation required by this section shall be based on indicators defined by the commissioner, but must include student performance on assessment instruments required under Sections 39.023(a) and (c). Academically, the mission of disciplinary alternative education programs shall be to enable students to perform at grade level.

(m-1) The commissioner shall develop a process for evaluating a school district disciplinary alternative education program electronically. The commissioner shall also develop a system and standards for review of the evaluation or use systems already available at the agency. The system must be designed to identify districts that are at high risk of having inaccurate disciplinary alternative education program data or of failing to comply with disciplinary alternative education program requirements. The commissioner shall notify the board of trustees of a district of any objection the commissioner has to the district's disciplinary alternative education program data or of a violation of a law or rule revealed by the data, including any violation of disciplinary alternative education program requirements, or of any recommendation by the commissioner concerning the data. If the data reflect that a penal law has been violated, the commissioner shall notify the county attorney, district attorney, or criminal district attorney, as appropriate, and the attorney general. The commissioner is entitled to access to all district records the commissioner considers necessary or appropriate for the review, analysis, or approval of disciplinary alternative education program data. Amended by: 82nd Leg., R.S., Ch. 1316 , Sec. 1, eff. June 17, 2011.

TEC §37.006. Removal for Certain Conduct

(a) A student shall be removed from class and placed in a disciplinary alternative education program as provided by Section 37.008 if the student:
(1) engages in conduct involving a public school that contains the elements of the offense of false alarm or report under Section 42.06, Penal Code, or terroristic threat under Section 22.07, Penal Code; or
(2) commits the following on or within 300 feet of school property, as measured from any point on the school's real property boundary line, or while attending a school-sponsored or school-related activity on or off of school property:
(A) engages in conduct punishable as a felony;
(B) engages in conduct that contains the elements of the offense of assault under Section 22.01(a)(1), Penal Code;
(C) sells, gives, or delivers to another person or possesses or uses or is under the influence of:

(i) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.; or

(ii) a dangerous drug, as defined by Chapter 483, Health and Safety Code;

(D) sells, gives, or delivers to another person an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code, commits a serious act or offense while under the influence of alcohol, or possesses, uses, or is under the influence of an alcoholic beverage;

(E) engages in conduct that contains the elements of an offense relating to an abusable volatile chemical under Sections 485.031 through 485.034, Health and Safety Code; ~~or~~

(F) engages in conduct that contains the elements of the offense of public lewdness under Section 21.07, Penal Code, or indecent exposure under Section 21.08, Penal Code; or

(G) engages in conduct that contains the elements of the offense of harassment under Section 42.07(a)(1), (2), (3), or (7), Penal Code, against an employee of the school district.

(b) Except as provided by Section 37.007(d), a student shall be removed from class and placed in a disciplinary alternative education program under Section 37.008 if the student engages in conduct on or off of school property that contains the elements of the offense of retaliation under Section 36.06, Penal Code, against any school employee.

(c) In addition to Subsections (a) and (b), a student shall be removed from class and placed in a disciplinary alternative education program under Section 37.008 based on conduct occurring off campus and while the student is not in attendance at a school-sponsored or school-related activity if:

(1) the student receives deferred prosecution under Section 53.03, Family Code, for conduct defined as:

(A) a felony offense in Title 5, Penal Code; or

(B) the felony offense of aggravated robbery under Section 29.03, Penal Code;

(2) a court or jury finds that the student has engaged in delinquent conduct under Section 54.03, Family Code, for conduct defined as:

(A) a felony offense in Title 5, Penal Code; or

(B) the felony offense of aggravated robbery under Section 29.03, Penal Code; or

(3) the superintendent or the superintendent's designee has a reasonable belief that the student has engaged in a conduct defined as:

(A) a felony offense in Title 5, Penal Code; or

(B) the felony offense of aggravated robbery under Section 29.03, Penal Code.

(d) In addition to Subsections (a), (b), and (c), a student may be removed from class and placed in a disciplinary alternative education program under Section 37.008 based on conduct occurring off campus and while the student is not in attendance at a school-sponsored or school-related activity if:

(1) the superintendent or the superintendent's designee has a reasonable belief that the student has engaged in conduct defined as a felony offense other than aggravated robbery under Section 29.03, Penal Code, or those offenses defined in Title 5, Penal Code; and

(2) the continued presence of the student in the regular classroom threatens the safety of other students or teachers or will be detrimental to the educational process.

(e) In determining whether there is a reasonable belief that a student has engaged in conduct defined as a felony offense by the Penal Code, the superintendent or the superintendent's designee may consider all available information, including the information furnished under Article 15.27, Code of Criminal Procedure.

(f) Subject to Section 37.007(e), a student who is younger than 10 years of age shall be removed from class and placed in a disciplinary alternative education program under Section 37.008 if the student engages in conduct described by Section 37.007. An elementary school student may not be placed in a disciplinary alternative education program with any other student who is not an elementary school student.

(g) The terms of a placement under this section must prohibit the student from attending or participating in a school-sponsored or school-related activity.

(h) On receipt of notice under Article 15.27(g), Code of Criminal Procedure, the superintendent or the superintendent's designee shall review the student's placement in the disciplinary alternative education program. The student may not be returned to the regular classroom pending the review. The superintendent or the superintendent's designee shall schedule a review of the student's placement with the student's parent or guardian not later than the third class day after the superintendent or superintendent's designee receives notice from the office or official designated by the court. After reviewing the notice and receiving information from the student's parent or guardian, the superintendent or the superintendent's designee may continue the student's placement in the disciplinary alternative education program if there is reason to believe that the presence of the student in the regular classroom threatens the safety of other students or teachers.

(i) The student or the student's parent or guardian may appeal the superintendent's decision under Subsection (h) to the board of trustees. The student may not be returned to the regular classroom pending the appeal. The

board shall, at the next scheduled meeting, review the notice provided under Article 15.27(g), Code of Criminal Procedure, and receive information from the student, the student's parent or guardian, and the superintendent or superintendent's designee and confirm or reverse the decision under Subsection (h). The board shall make a record of the proceedings. If the board confirms the decision of the superintendent or superintendent's designee, the board shall inform the student and the student's parent or guardian of the right to appeal to the commissioner under Subsection (j).

(j) Notwithstanding Section 7.057(e), the decision of the board of trustees under Subsection (i) may be appealed to the commissioner as provided by Sections 7.057(b), (c), (d), and (f). The student may not be returned to the regular classroom pending the appeal.

(k) Subsections (h), (i), and (j) do not apply to placements made in accordance with Subsection (a).

(l) Notwithstanding any other provision of this code, other than Section 37.007(e)(2), a student who is younger than six years of age may not be removed from class and placed in a disciplinary alternative education program.

(m) Removal to a disciplinary alternative education program under Subsection (a) is not required if the student is expelled under Section 37.007 for the same conduct for which removal would be required.

(n) A principal or other appropriate administrator may but is not required to remove a student to a disciplinary alternative education program for off-campus conduct for which removal is required under this section if the principal or other appropriate administrator does not have knowledge of the conduct before the first anniversary of the date the conduct occurred.

TEC §37.0081. Placement of Certain Students in Disciplinary Alternative Education Programs

(a) Subject to Subsection (h), but notwithstanding any other provision of this subchapter, the board of trustees of a school district, or the board's designee, after an opportunity for a hearing may expel a student and elect to place the student in an alternative setting as provided by Subsection (a-1) if:

(1) the student:

(A) has received deferred prosecution under Section 53.03, Family Code, for conduct defined as:

(i) a felony offense in Title 5, Penal Code; or

(ii) the felony offense of aggravated robbery under Section 29.03, Penal Code;

(B) has been found by a court or jury to have engaged in delinquent conduct under Section 54.03, Family Code, for conduct defined as:

(i) a felony offense in Title 5, Penal Code; or

(ii) the felony offense of aggravated robbery under Section 29.03, Penal Code;

(C) is charged with engaging in conduct defined as:

(i) a felony offense in Title 5, Penal Code; or

(ii) the felony offense of aggravated robbery under Section 29.03, Penal Code;

(D) has been referred to a juvenile court for allegedly engaging in delinquent conduct under Section 54.03, Family Code, for conduct defined as:

(i) a felony offense in Title 5, Penal Code; or

(ii) the felony offense of aggravated robbery under Section 29.03, Penal Code;

(E) has received probation or deferred adjudication for a felony offense under Title 5, Penal Code, or the felony offense of aggravated robbery under Section 29.03, Penal Code;

(F) has been convicted of a felony offense under Title 5, Penal Code, or the felony offense of aggravated robbery under Section 29.03, Penal Code; or

(G) has been arrested for or charged with a felony offense under Title 5, Penal Code, or the felony offense of aggravated robbery under Section 29.03, Penal Code; and

(2) the board or the board's designee determines that the student's presence in the regular classroom:

(A) threatens the safety of other students or teachers;

(B) will be detrimental to the educational process; or

(C) is not in the best interests of the WCSESSA's students.

(b) Any decision of the board of trustees or the board's designee under this section is final and may not be appealed.

(c) The board of trustees or the board's designee may order placement in accordance with this section regardless of:

(1) the date on which the student's conduct occurred;

(2) the location at which the conduct occurred;

(3) whether the conduct occurred while the student was enrolled in the district; or

(4) whether the student has successfully completed any court disposition requirements imposed in connection with the conduct.

(d) Notwithstanding Section 37.009(c) or any other provision of this subchapter, the board of trustees or the board's designee may order placement in accordance with this section for any period considered necessary by the board or the board's designee in connection with the determination made under Subsection (a)(2). A student placed in a disciplinary alternative education program in accordance with this section is entitled to the periodic review prescribed by Section 37.009(e).

JJAEP (Juvenile Justice Alternative Education Programs)

TAC §89.1052. Discretionary Placements in Juvenile Justice Alternative Education Programs.

(a) This section applies only to the expulsion of a student with a disability under:
  (1) Texas Education Code (TEC), §37.007(b), (c), or (f); or
  (2) TEC, §37.007(d), as a result of conduct that contains the elements of any offense listed in TEC, §37.007(b)(2)(C), against any employee or volunteer in retaliation for or as a result of the person's employment or association with a school district.

(b) In a county with a Juvenile Justice Alternative Education Program, a local school district must invite the administrator of the JJAEP or the administrator's designee to an admission, review, and dismissal (ARD) committee meeting convened to discuss the expulsion of a student with a disability under one of the provisions listed in subsection (a) of this section, relating to offenses for which a school district may expel a student. The school district must provide written notice of the meeting at least five school days before the meeting or a shorter timeframe agreed to by the student's parents. A copy of the student's current individualized education program (IEP) must be provided to the JJAEP representative with the notice. 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. The JJAEP representative may participate in the meeting to the extent that the meeting relates to the student's placement in the JJAEP and implementation of the student's current IEP in the JJAEP.

(c) For a student with a disability who was expelled under one of the provisions listed in subsection (a) of this section and placed in the JJAEP, an ARD committee meeting must be convened to reconsider placement of the student in the JJAEP if the JJAEP provides written notice to the school district of specific concerns that the student's educational or behavioral needs cannot be met in the JJAEP. The school district must invite the JJAEP administrator or the administrator's designee to the meeting and must provide written notice of the meeting or a shorter timeframe agreed to by the student's parents. 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. The JJAEP representative may participate in the meeting to the extent that the meeting relates to the student's continued placement in the JJAEP.

TEC §37.011. Juvenile Justice Alternative Education Program

(a) The juvenile board of a county with a population greater than 125,000 shall develop a juvenile justice alternative education program, subject to the approval of the Texas Juvenile Probation Commission. The juvenile board of a county with a population of 125,000 or less may develop a juvenile justice alternative education program. For the purposes of this subchapter, only a disciplinary alternative education program operated under the authority of a juvenile board of a county is considered a juvenile justice alternative education program. A juvenile justice alternative education program in a county with a population of 125,000 or less:
  (1) is not required to be approved by the Texas Juvenile Probation Commission; and
  (2) is not subject to Subsection (c), (d), (f), or (g).

(b) If a student admitted into the public schools of a school district under Section 25.001(b) is expelled from school for conduct for which expulsion is required under Section 37.007(a), (d), or (e), the juvenile court, the juvenile board, or the juvenile board's designee, as appropriate, shall:
  (1) if the student is placed on probation under Section 54.04, Family Code, order the student to attend the juvenile justice alternative education program in the county in which the student resides from the date of disposition as a condition of probation, unless the child is placed in a post-adjudication treatment facility;
  (2) if the student is placed on deferred prosecution under Section 53.03, Family Code, by the court, prosecutor, or probation department, require the student to immediately attend the juvenile justice alternative education program in the county in which the student resides for a period not to exceed six months as a condition of the deferred prosecution;
  (3) in determining the conditions of the deferred prosecution or court-ordered probation, consider the length of the school district's expulsion order for the student; and

(4) provide timely educational services to the student in the juvenile justice alternative education program in the county in which the student resides, regardless of the student's age or whether the juvenile court has jurisdiction over the student.

(b-1) Subsection (b)(4) does not require that educational services be provided to a student who is not entitled to admission into the public schools of a school district under Section 25.001(b).

(c) A juvenile justice alternative education program shall adopt a student code of conduct in accordance with Section 37.001.

(d) A juvenile justice alternative education program must focus on English language arts, mathematics, science, social studies, and self-discipline. Each school district shall consider course credit earned by a student while in a juvenile justice alternative education program as credit earned in a district school. Each program shall administer assessment instruments under Subchapter B, Chapter 39, and shall offer a high school equivalency program. The juvenile board or the board's designee, with the parent or guardian of each student, shall regularly review the student's academic progress. In the case of a high school student, the board or the board's designee, with the student's parent or guardian, shall review the student's progress towards meeting high school graduation requirements and shall establish a specific graduation plan for the student. The program is not required to provide a course necessary to fulfill a student's high school graduation requirements other than a course specified by this subsection.

(e) A juvenile justice alternative education program may be provided in a facility owned by a school district. A school district may provide personnel and services for a juvenile justice alternative education program under a contract with the juvenile board.

(f) A juvenile justice alternative education program must operate at least seven hours per day and 180 days per year, except that a program may apply to the Texas Juvenile Probation Commission for a waiver of the 180-day requirement. The commission may not grant a waiver to a program under this subsection for a number of days that exceeds the highest number of instructional days waived by the commissioner during the same school year for a school district served by the program.

(g) A juvenile justice alternative education program shall be subject to a written operating policy developed by the local juvenile justice board and submitted to the Texas Juvenile Probation Commission for review and comment. A juvenile justice alternative education program is not subject to a requirement imposed by this title, other than a reporting requirement or a requirement imposed by this chapter or by Chapter 39.

(h) Academically, the mission of juvenile justice alternative education programs shall be to enable students to perform at grade level. For purposes of accountability under Chapter 39, a student enrolled in a juvenile justice alternative education program is reported as if the student were enrolled at the student's assigned campus in the student's regularly assigned education program, including a special education program. Annually the Texas Juvenile Probation Commission, with the agreement of the commissioner, shall develop and implement a system of accountability consistent with Chapter 39, where appropriate, to assure that students make progress toward grade level while attending a juvenile justice alternative education program. The Texas Juvenile Probation Commission shall adopt rules for the distribution of funds appropriated under this section to juvenile boards in counties required to establish juvenile justice alternative education programs. Except as determined by the commissioner, a student served by a juvenile justice alternative education program on the basis of an expulsion required under Section 37.007(a), (d), or (e) is not eligible for Foundation School Program funding under Chapter 42 or 31 if the juvenile justice alternative education program receives funding from the Texas Juvenile Probation Commission under this subchapter.

(i) A student transferred to a juvenile justice alternative education program must participate in the program for the full period ordered by the juvenile court unless the student's school district agrees to accept the student before the date ordered by the juvenile court. The juvenile court may not order a period of transfer under this section that exceeds the term of any probation ordered by the juvenile court.

(j) In relation to the development and operation of a juvenile justice alternative education program, a juvenile board and a county and a commissioners court are immune from liability to the same extent as a school district, and the juvenile board's or county's professional employees and volunteers are immune from liability to the same extent as a school district's professional employees and volunteers.

(k) Each school district in a county with a population greater than 125,000 and the county juvenile board shall annually enter into a joint memorandum of understanding that:

(1) outlines the responsibilities of the juvenile board concerning the establishment and operation of a juvenile justice alternative education program under this section;

(2) defines the amount and conditions on payments from the school district to the juvenile board for students of the school district served in the juvenile justice alternative education program whose placement was not made on the basis of an expulsion required under Section 37.007(a), (d), or (e);

(3) establishes that a student may be placed in the juvenile justice alternative education program if the student engages in serious misbehavior, as defined by Section 37.007(c).

(found in Section 6 of this OG)

(4) identifies and requires a timely placement and specifies a term of placement for expelled students for whom the school district has received a notice under Section 52.041(d), Family Code;

(5) establishes services for the transitioning of expelled students to the school district prior to the completion of the student's placement in the juvenile justice alternative education program;

(6) establishes a plan that provides transportation services for students placed in the juvenile justice alternative education program;

(7) establishes the circumstances and conditions under which a juvenile may be allowed to remain in the juvenile justice alternative education program setting once the juvenile is no longer under juvenile court jurisdiction; and

(8) establishes a plan to address special education services required by law.

(l) The school district shall be responsible for providing an immediate educational program to students who engage in behavior resulting in expulsion under Section 37.007(b), (c) and (f) but who are not eligible for admission into the juvenile justice alternative education program in accordance with the memorandum of understanding required under this section. The school district may provide the program or the school district may contract with a county juvenile board, a private provider, or one or more other school districts to provide the program. The memorandum of understanding shall address the circumstances under which such students who continue to engage in serious [or persistent] misbehavior, as defined by Section 37.007(c), shall be admitted into the juvenile justice alternative education program.

(m) Each school district in a county with a population greater than 125,000 and the county juvenile board shall adopt a joint memorandum of understanding as required by this section not later than September 1 of each school year.

(n) If a student who is ordered to attend a juvenile justice alternative education program moves from one county to another, the juvenile court may request the juvenile justice alternative education program in the county to which the student moves to provide educational services to the student in accordance with the local memorandum of understanding between the school district and juvenile board in the receiving county.

(o) In relation to the development and operation of a juvenile justice alternative education program, a juvenile board and a county and a commissioners court are immune from liability to the same extent as a school district, and the juvenile board's or county's employees and volunteers are immune from liability to the same extent as a school district's employees and volunteers.

(p) If a district elects to contract with the juvenile board for placement in the juvenile justice alternative education program of students expelled under Section 37.007(b), (c), and (f) and the juvenile board and district are unable to reach an agreement in the memorandum of understanding, either party may request that the issues of dispute be referred to a binding arbitration process that uses a qualified alternative dispute resolution arbitrator in which each party will pay its pro rata share of the arbitration costs. Each party must submit its final proposal to the arbitrator. If the parties cannot agree on an arbitrator, the juvenile board shall select an arbitrator, the school districts shall select an arbitrator, and those two arbitrators shall select an arbitrator who will decide the issues in dispute. An arbitration decision issued under this subsection is enforceable in a court in the county in which the juvenile justice alternative education program is located. Any decision by an arbitrator concerning the amount of the funding for a student who is expelled and attending a juvenile justice alternative education program must provide an amount sufficient based on operation of the juvenile justice alternative education program in accordance with this chapter. In determining the amount to be paid by a school district for an expelled student enrolled in a juvenile justice alternative education program, the arbitrator shall consider the relevant factors, including evidence of:

(1) the actual average total per student expenditure in the district's alternative education setting;

(2) the expected per student cost in the juvenile justice alternative education program as described and agreed on in the memorandum of understanding and in compliance with this chapter; and

(3) the costs necessary to achieve the accountability goals under this chapter.

(q) In accordance with rules adopted by the board of trustees for the Teacher Retirement System of Texas, a certified educator employed by a juvenile board in a juvenile justice alternative education program shall be eligible for membership and participation in the system to the same extent that an employee of a public school district is eligible. The juvenile board shall make any contribution that otherwise would be the responsibility of the school district if the person were employed by the school district, and the state shall make any contribution to the same extent as if the person were employed by a school district.

Other TEC regulations for JJAEP are addressed by local school board policy.

The campus administrator and diagnostician on the designated campus is responsible for ensuring all procedures and guidelines are followed for the expulsion of a student with a disability as well as notification to all special education and general education teachers. Involvement of the special education designated administrator is also necessary to ensure clear communication.

E. Expulsion

TEC §37.023. TRANSITION FROM ALTERNATIVE EDUCATION PROGRAM TO REGULAR CLASSROOM.

(a) In this section:

(1) "Alternative education program" includes:

(A) a disciplinary alternative education program operated by a school district or open-enrollment charter school;

(B) a juvenile justice alternative education program; and

(C) a residential program or facility operated by or under contract with the Texas Juvenile Justice Department, a juvenile board, or any other governmental entity.

(2) "Licensed clinical social worker" has the meaning assigned by Section 505.002, Occupations Code.

(b) As soon as practicable after an alternative education program determines the date of a student's release from the program, the alternative education program administrator shall:

(1) provide written notice of that date to:

(A) the student's parent or a person standing in parental relation to the student; and

(B) the administrator of the campus to which the student intends to transition; and

(2) provide the campus administrator:

(A) an assessment of the student's academic growth while attending the alternative education program; and

(B) the results of any assessment instruments administered to the student.

(c) Not later than five instructional days after the date of a student's release from an alternative education program, the campus administrator shall coordinate the student's transition to a regular classroom. The coordination must include assistance and recommendations from:

(1) school counselors;

(2) school district peace officers;

(3) school resource officers;

(4) licensed clinical social workers;

(5) campus behavior coordinators;

(6) classroom teachers who are or may be responsible for implementing the student's personalized transition plan developed under Subsection (d); and

(7) any other appropriate school district personnel.

(d) The assistance required by Subsection (c) must include a personalized transition plan for the student developed by the campus administrator. A personalized transition plan:

(1) must include recommendations for the best educational placement of the student; and

(2) must include:

(A) recommendations for counseling, behavioral management, or academic assistance for the student with a concentration on the student's academic or career goals;

(B) recommendations for assistance for obtaining access to mental health services provided by the district or school, a local mental health authority, or another private or public entity;

(C) the provision of information to the student's parent or a person standing in parental relation to the student about the process to request a full individual and initial evaluation of the student for purposes of special education services under Section 29.004; and

(D) a regular review of the student's progress toward the student's academic or career goals.

(e) If practicable, the campus administrator, or the administrator's designee, shall meet with the student's parent or a person standing in parental relation to the student to coordinate plans for the student's transition.

(f) This section applies only to a student subject to compulsory attendance requirements under Section 25.085.

For students with a disability served through the special education department, the ARD Committee will address appropriate placement and services needed for the student returning from an Alternative Education Program. The ARDC will take into consideration the requirements from TEC §37.023.

TEC §37.007. EXPULSION FOR SERIOUS OFFENSES.

(a) Except as provided by Subsection (k), a student shall be expelled from a school if the student, on school property or while attending a school-sponsored or school-related activity on or off of school property:
  (1) engages in conduct that contains the elements of the offense of the offense of unlawfully carrying weapons under Section 46.02, Penal Code, or elements of an offense relating to prohibited weapons under Section 46.05, Penal Code;
  (2) engages in conduct that contains the elements of the offense of:
    (A) aggravated assault under Section 22.02, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;
    (B) arson under Section 28.02, Penal Code;
    (C) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or criminal attempt, under Section 15.01, Penal Code, to commit murder or capital murder;
    (D) indecency with a child under Section 21.11, Penal Code;
    (E) aggravated kidnapping under Section 20.04, Penal Code;
    (F) aggravated robbery under Section 29.03, Penal Code;
    (G) manslaughter under Section 19.04, Penal Code;
    (H) criminally negligent homicide under Section 19.05, Penal Code; or
    (I) continuous sexual abuse of young child or children under Section 21.02, Penal Code; or
  (3) engages in conduct specified by Section 37.006(a)(2)(C) or (D), if the conduct is punishable as a felony.

(b) A student may be expelled if the student:
  (1) engages in conduct involving a public school that contains the elements of the offense of false alarm or report under Section 42.06, Penal Code, or terroristic threat under Section 22.07, Penal Code;
  (2) while on or within 300 feet of school property, as measured from any point on the school's real property boundary line, or while attending a school-sponsored or school-related activity on or off of school property:
    (A) sells, gives, or delivers to another person or possesses, uses, or is under the influence of any amount of:
      (i) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.;
      (ii) a dangerous drug, as defined by Chapter 483, Health and Safety Code; or
      (iii) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code;
    (B) engages in conduct that contains the elements of an offense relating to an abusable volatile chemical under Sections 485.031 through 485.034, Health and Safety Code;
    (C) engages in conduct that contains the elements of an offense under Section 22.01(a)(1), Penal Code, against a school district employee or a volunteer as defined by Section 22.053; or
    (D) engages in conduct that contains the elements of the offense of deadly conduct under Section 22.05, Penal Code;
  (3) subject to Subsection (d), while within 300 feet of school property, as measured from any point on the school's real property boundary line:
    (A) engages in conduct specified by Subsection (a); or
    (B) possesses a firearm, as defined by 18 U.S.C. Section 921; or
  (4) engages in conduct that contains the elements of any offense listed in Subsection (a)(2)(A) or (C) or the offense of aggravated robbery under Section 29.03, Penal Code, against another student, without regard to whether the conduct occurs on or off of school property or while attending a school-sponsored or school-related activity on or off of school property.
  (5) engages in conduct that contains the elements of the offense of breach of computer security under Section 33.02, Penal Code, if:
    (A) the conduct involves accessing a computer, computer network, or computer system owned by or operated on behalf of a school district; and
    (B) the student knowingly:
      (i) alters, damages, or deletes school district property or information; or
      (ii) commits a breach of any other computer, computer network, or computer system.

(c) engages in documented serious misbehavior while on the program campus despite documented behavioral interventions. For purposes of this subsection, "serious misbehavior" means:
  (1) deliberate violent behavior that poses a direct threat to the health or safety of others;
  (2) extortion, meaning the gaining of money or other property by force or threat;
  (3) conduct that constitutes coercion, as defined by Section 1.07, Penal Code; or
  (4) conduct that constitutes the offense of:
    (A) public lewdness under Section 21.07, Penal Code;

(B) indecent exposure under Section 21.08, Penal Code;
(C) criminal mischief under Section 28.03, Penal Code;
(D) personal hazing under Section 37.152; or
(E) harassment under Section 42.07(a)(1), Penal Code, of a student or district employee.

(d) A student shall be expelled if the student engages in conduct that contains the elements of any offense listed in Subsection (a), and may be expelled if the student engages in conduct that contains the elements of any offense listed in Subsection (b)(2)(C), against any employee or volunteer in retaliation for or as a result of the person's employment or association with a school district, without regard to whether the conduct occurs on or off of school property or while attending a school-sponsored or school-related activity on or off of school property.

(e) In accordance with 20 U.S.C. Section 7151, a local educational agency, including a school district, home-rule school district, or open-enrollment charter school, shall expel a student who brings a firearm, as defined by 18 U.S.C. Section 921, to school. The student must be expelled from the student's regular campus for a period of at least one year, except that:
(1) the superintendent or other chief administrative officer of the school district or of the other local educational agency, as defined by 20 U. S.C. Section 7801, may modify the length of the expulsion in the case of an individual student;
(2) the district or other local educational agency shall provide educational services to an expelled student in a disciplinary alternative education program as provided by Section 37.008 if the student is younger than 10 years of age on the date of expulsion; and
(3) the district or other local educational agency may provide educational services to an expelled student who is 10 years of age or older in a disciplinary alternative education program as provided in Section 37.008.

(f) A student who engages in conduct that contains the elements of the offense of criminal mischief under Section 28.03, Penal Code, may be expelled at the district's discretion if the conduct is punishable as a felony under that section. The student shall be referred to the authorized officer of the juvenile court regardless of whether the student is expelled.

(g) In addition to any notice required under Article 15.27, Code of Criminal Procedure, a school district shall inform each educator who has responsibility for, or is under the direction and supervision of an educator who has responsibility for, the instruction of a student who has engaged in any violation listed in this section of the student's misconduct. Each educator shall keep the information received under this subsection confidential from any person not entitled to the information under this subsection, except that the educator may share the information with the student's parent or guardian as provided for by state or federal law. The State Board for Educator Certification may revoke or suspend the certification of an educator who intentionally violates this subsection.

(h) Subject to Subsection (e), notwithstanding any other provision of this section, a student who is younger than 10 years of age may not be expelled for engaging in conduct described by this section.

(i) A student who engages in conduct described by Subsection (a) may be expelled from school by the district in which the student attends school if the student engages in that conduct:
(1) on school property of another district in this state; or
(2) while attending a school-sponsored or school-related activity of a school in another district in this state.

(k) A student may not be expelled solely on the basis of the student's use, exhibition, or possession of a firearm that occurs:
(1) at an approved target range facility that is not located on a school campus; and
(2) while participating in or preparing for a school-sponsored shooting sports competition or a shooting sports educational activity that is sponsored or supported by the Parks and Wildlife Department or a shooting sports sanctioning organization working with the department.

(l) Subsection (k) does not authorize a student to bring a firearm on school property to participate in or prepare for a school-sponsored shooting sports competition or a shooting sports educational activity described by that subsection.

The placement of a student who is expelled must not be changed to the homebound instructional setting (see 10.6.2 Disciplinary Removals of Students with Disabilities for detailed information regarding appropriate instructional setting codes and ADA eligibility when expelling students who are receiving special education and related services). http://tea.texas.gov/index2.aspx?id=25769817607

F. Emergency Placement

TEC §37.019. Emergency Placement of Expulsion

(a) This subchapter does not prevent the principal or the principal's designee from ordering the immediate placement of a student in a disciplinary alternative education program if the principal or the principal's designee reasonably believes the student's behavior is so unruly, disruptive, or abusive that it seriously interferes with a teacher's ability to communicate effectively with the students in a class, with the ability of the student's classmates to learn, or with the operation of school or a school-sponsored activity.

(b) This subchapter does not prevent the principal or the principal's designee from ordering the immediate expulsion of a student if the principal or the principal's designee reasonably believes that action is necessary to protect persons or property from imminent harm.

(c) At the time of an emergency placement or expulsion, the student shall be given oral notice of the reason for the action. The reason must be a reason for which placement in a disciplinary alternative education program or expulsion may be made on a nonemergency basis. Within a reasonable time after the emergency placement or expulsion, but not later than the 10th day after the date of the placement or expulsion, the student shall be accorded the appropriate due process as required under Section 37.009. If the student subject to the emergency placement or expulsion is a student with disabilities who receives special education services, the emergency placement or expulsion is subject to federal law and regulations and must be consistent with the consequences that would apply under this subchapter to a student without a disability.

(d) A principal or principal's designee is not liable in civil damages for an emergency placement under this section.

G. Court Involvement after Hearing.

§37.010. Court Involvement

(a) Not later than the second business day after the date a hearing is held under Section 37.009, the board of trustees of a school district or the board's designee shall deliver a copy of the order placing a student in a disciplinary alternative education program under Section 37.006 or expelling a student under Section 37.007 and any information required under Section 52.04, Family Code, to the authorized officer of the juvenile court in the county in which the student resides. In a county that operates a program under Section 37.011, an expelled student shall to the extent provided by law or by the memorandum of understanding immediately attend the educational program from the date of expulsion, except that in a county with a population greater than 125,000, every expelled student who is not detained or receiving treatment under an order of the juvenile court must be enrolled in an educational program.

(b) If a student is expelled under Section 37.007(c), the board or its designee shall refer the student to the authorized officer of the juvenile court for appropriate proceedings under Title 3, Family Code.

(c) Unless the juvenile board for the county in which the district's central administrative office is located has entered into a memorandum of understanding with the district's board of trustees concerning the juvenile probation department's role in supervising and providing other support services for students in disciplinary alternative education programs, a court may not order a student expelled under Section 37.007 to attend a regular classroom, a regular campus, or a school district disciplinary alternative education program as a condition of probation.

(d) Unless the juvenile board for the county in which the district's central administrative office is located has entered into a memorandum of understanding as described by Subsection (c), if a court orders a student to attend a disciplinary alternative education program as a condition of probation once during a school year and the student is referred to juvenile court again during that school year, the juvenile court may not order the student to attend a disciplinary alternative education program in a district without the district's consent until the student has successfully completed any sentencing requirements the court imposes.

(e) Any placement in a disciplinary alternative education program by a court under this section must prohibit the student from attending or participating in school sponsored or school-related activities.

(f) If a student is expelled under Section 37.007, on the recommendation of the committee established under Section 37.003 or on its own initiative, a district may readmit the student while the student is completing any court disposition requirements the court imposes. After the student has successfully completed any court disposition requirements the court imposes, including conditions of a deferred prosecution ordered by the court, or such conditions required by the prosecutor or probation department, if the student meets the requirements for admission into the public schools established by this title, a district may not refuse to admit the student, but the district may place the student in the disciplinary alternative education program. Notwithstanding Section 37.002(d), the student may not be returned to the classroom of the teacher under whose supervision the offense occurred without that teacher's consent. The teacher may not be coerced to consent.

(g) If an expelled student enrolls in another school district, the board of trustees of the district that expelled the student shall provide to the district in which the student enrolls, at the same time other records of the student are provided, a copy of the expulsion order and the referral to the authorized officer of the juvenile court. The district in which the student enrolls may continue the expulsion under the terms of the order, may place the student in a disciplinary alternative education program for the period specified by the expulsion order, or may allow the student to attend regular classes without completing the period of expulsion. A district may take any action permitted by this subsection if the student was expelled by a school district in another state if:

(1) the out-of-state district provides to the district a copy of the expulsion order; and

(2) the grounds for the expulsion are also grounds for expulsion in the district in which the student is enrolling.

(g-1) If a student was expelled by a school district in another state for a period that exceeds one year and a school district in this state continues the expulsion or places the student in a disciplinary alternative education program under Subsection (g), the district shall reduce the period of the expulsion or placement so that the aggregate period does not exceed one year unless, after a review, the district determines that:

(1) the student is a threat to the safety of other students or to district employees; or

(2) extended placement is in the best interest of the student.

(h) A person is not liable in civil damages for a referral to juvenile court as required by this section.

IV. FREE APPROPRIATE PUBLIC EDUCATION (FAPE) FOR STUDENTS REMOVED

§300.530 Authority of school personnel.

(a) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

(b) General.

(1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §300.536).

(2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.

(c) Additional authority. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.

(d) Services.

(1) A child with a disability who is removed from the child's current placement pursuant to paragraph (c) or (g) of this section must--

(i) Continue to receive educational services, as provided in § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5), of this section may be provided in an interim alternative educational setting.

(3) A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who has been similarly removed.

(4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under §300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

(5) If the removal is a change of placement under §300.536, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section.

(e) Manifestation determination.

(1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the WCSESSA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine--

(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(ii) If the conduct in question was the direct result of the WCSESSA's failure to implement the IEP.

(2) The conduct must be determined to be a manifestation of the child's disability if the WCSESSA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.

(3) If the LEA, the parent and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.

(f) Determination that behavior was a manifestation. If the WCSESSA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must--

(1) Either--

(i) Conduct a functional behavioral assessment, unless the WCSESSA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

(ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

(g) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child--

(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;

(2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or

(3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

(h) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in §300.504.

(i) Definitions. For purposes of this section, the following definitions apply:

(1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(2) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(3) Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

(4) Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code. (Authority: 20 U.S.C. 1415(k)(1) and (7))

TEC §37.021. Opportunity To Complete Courses During In-School And Certain Other Placements.

(a) If a school district removes a student from the regular classroom and places the student in in-school suspension or another setting other than a disciplinary alternative education program, the district shall offer the student the opportunity to complete before the beginning of the next school year each course in which the student was enrolled at the time of the removal.

(b) The district may provide the opportunity to complete courses by any method available, including a correspondence course, distance learning, or summer school.

V. CONFINEMENT, RESTRAINT, TIME-OUT

A. Use of Confinement, Restraint, Seclusion, and Time-Out

TEC §37.0021. Use of Confinement, Restraint, Seclusion, and Time-out

(a) It is the policy of this state to treat with dignity and respect all students, including students with disabilities who receive special education services under Subchapter A, Chapter 29. A student with a disability who receives special education services under Subchapter A, Chapter 29, 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.

(b) In this section:

(1) " 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.

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

(A) is designed solely to seclude a person; and

(B) contains less than 50 square feet of space.

(3) " 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:

(A) that is not locked; and

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

(c) A LEA employee or volunteer or an independent contractor of a district may not place a student in seclusion. This subsection does not apply to the use of seclusion in a court-ordered placement, other than a placement in an educational program of LEA, or in a placement or facility to which the following law, rules, or regulations apply:

(1) the Children's Health Act of 2000, Pub. L. No. 106-310, any subsequent amendments to that Act, any regulations adopted under that Act, or any subsequent amendments to those regulations;

(2) 40 TAC. Sections 720.1001-720.1013; or

(3) 25 TAC. Section 412.308(e).

(d) The commissioner by rule shall adopt procedures for the use of restraint and time-out by a LEA 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. 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.

(e) In the case of a conflict between a rule adopted under Subsection (d) and a rule adopted under Subchapter A, Chapter 29, the rule adopted under Subsection (d) controls.

(f) For purposes of this subsection, "weapon" includes any weapon described under Section 37.007(a)(1). This section 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.

(g) This section and any rules or procedures adopted under this section **do not apply** to:

(1) a peace officer while performing law enforcement duties;

(2) juvenile probation, detention, or corrections personnel; or

(3) an educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of the LEA.

B. Procedures for Use of Restraint and Time-out

TAC §89.1053. Procedures for Use of Restraint and Time-Out.

(a) Requirement to implement. In addition to the requirements of 34 Code of Federal Regulations (CFR), §300.324(a)(2)(i), school districts and charter schools must implement the provisions of this section regarding the use of restraint and time-out. In accordance with the provisions of Texas Education Code (TEC), §37.0021 (Use of Confinement, Restraint, Seclusion, and Time-Out), it is the policy of the state to treat with dignity and respect all students, including students with disabilities who receive special education services under TEC, Chapter 29, Subchapter A.

(b) Definitions.
  (1) Emergency means a situation in which a student's behavior poses a threat of:
    (A) imminent, serious physical harm to the student or others; or
    (B) imminent, serious property destruction.
  (2) Restraint means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of the student's body.
  (3) 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:
    (A) that is not locked; and
    (B) from which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.

(c) Use of restraint. A school employee, volunteer, or independent contractor may use restraint only in an emergency as defined in subsection (b) of this section and with the following limitations.
  (1) Restraint must be limited to the use of such reasonable force as is necessary to address the emergency.
  (2) Restraint must be discontinued at the point at which the emergency no longer exists.
  (3) Restraint must be implemented in such a way as to protect the health and safety of the student and others.
  (4) Restraint must not deprive the student of basic human necessities.

(d) Training on use of restraint. Training for school employees, volunteers, or independent contractors must be provided according to the following requirements.
  (1) A core team of personnel on each WCSESSA 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 use of restraint must include prevention and de-escalation techniques and provide alternatives to the use of restraint.
  (4) All trained personnel must receive instruction in current professionally accepted practices and standards regarding behavior management and the use of restraint.

(e) Documentation and notification on use of restraint. In a case in which restraint is used, school employees, volunteers, or independent contractors must 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 must be made to verbally notify the parent(s) regarding the use of restraint. (Sample form http://tea.texas.gov/Academics/Special_Student_Populations/Special_Education/Programs_and_Services/State_Guidance/Written_Summary_of_Restraint_Use_Sample_Form/)
  (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 admission, review, and dismissal (ARD) committee when it considers the impact of the student's behavior on the student's learning and/or the creation or revision of a behavioral intervention plan (BIP).
  (5) Written notification to the parent(s) and documentation to the student's special education eligibility folder must include the following:
    (A) name of the student;
    (B) name of the staff member(s) administering the restraint;
    (C) 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.

(f) Clarification regarding restraint. The provisions adopted under this section do not apply to the use of physical force or a mechanical device that does not significantly restrict the free movement of all or a portion of the student's body. Restraint that involves significant restriction as referenced in subsection (b)(2) of this section does not include:
(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 the 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, with the expectation that instruction will be reflected in the individualized education program (IEP) as required by 34 CFR, §300.324(a)(2)(i) to promote student learning and reduce and/or prevent the need for ongoing intervention; or
(4) seat belts and other safety equipment used to secure students during transportation.

(g) Use of time-out. A school employee, volunteer, or independent contractor may use time-out in accordance with subsection (b)(3) of this section with the following limitations.
(1) Physical force or threat of physical force must 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 a targeted behavior.
(3) Use of time-out must 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.

(h) Training on use of time-out. Training for school employees, volunteers, or independent contractors must 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.
(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 must receive instruction in current professionally accepted practices and standards regarding behavior management and the use of time-out.

(i) Documentation on 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.

(j) Student safety. 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.

(k) Data reporting. With the exception of actions covered by subsection (f) of this section, data regarding the use of restraint must be electronically reported to the Texas Education Agency (TEA) in accordance with reporting standards specified by the TEA.

(l) Peace officers. The provisions adopted under this section apply to a peace officer only if the peace officer is employed or commissioned by the school district or provides, as a school resource officer, a regular police presence on a school district campus under a memorandum of understanding between the school district and a local law enforcement agency, except that the data reporting requirements in subsection (k) of this section apply to the use of restraint by any peace officer performing law enforcement duties on school property or during a school-sponsored or school-related activity.

(m) The provisions adopted under this section do not apply to:

(1) juvenile probation, detention, or corrections personnel; or
(2) an educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of the WCSESSA.

C. Time-out Guidelines

The staff of WCSESSA will be trained and all rules above will be followed. The guidelines below are for the use of time-out. Time-out is outlined below as either Non-exclusionary, which is the least restrictive, or Exclusionary time-out which results from more serious behaviors. Exclusionary time-out should be used when Non-exclusionary attempts are not successful.

1. Non-exclusionary time-out:

- *Planned Ignoring: This is the simplest form of Non-exclusionary time-out. Planned ignoring involves the systematic removal of social reinforcement (attention) by the teacher for a specific amount of time. When the student misbehaves, the teacher breaks eye contact, turns away, and stops all social interaction with the student. Planned ignoring assumes that the teacher's social attention is reinforcing. If it is not, then this will not work to decrease the behavior. If planned ignoring is the appropriate response, the teacher should prepare initially for an increase in the behavior before the behavior will decrease.*
- *Head down on desk: This has been used by teachers for a long time. The student is simply told to put his head down on his desk for a short period of time. (timer may be used)*
- *Observation time-out: The student is removed from his/her desk for misbehaving and is usually placed in a desk away from the main classroom activities for a short period of time. The student is allowed/required to observe the classroom discussion/activities, but is not allowed to actively participate in them. (use of timer recommended – 5 minutes and may reset once)*
- *Non-observation time-out (instructional isolation): This is basically the same as observation time-out, except the student is not allowed to observe the classroom activities. Usually, the student is placed in a particular part of the classroom that does not provide for viewing other students. (use of timer recommended – 10 minutes and may reset once)*

2. Exclusionary time-out: The student is removed from the classroom and placed in a separate environment for cooling down and instructional activities to resume. Clearly, this is more restrictive and other types of time-out should be attempted first.

- *Isolated instruction: This is extended time-out from the classroom. The student is required to complete class work in an isolated area in the classroom, another classroom, or the office.*
- *In-school Suspension: This program is designed to supervise and assist students who have problems related to their general education setting. Reference the campus Student Code of Conduct for complete guidelines.*

D. Prohibited Aversive Techniques

TEC §37.0023. PROHIBITED AVERSIVE TECHNIQUES.

(a) In this section, "aversive technique" means a technique or intervention that is intended to reduce the likelihood of a behavior reoccurring by intentionally inflicting on a student significant physical or emotional discomfort or pain. The term includes a technique or intervention that:

(1) is designed to or likely to cause physical pain, other than an intervention or technique permitted under Section 37.0011;

(2) notwithstanding Section 37.0011, is designed to or likely to cause physical pain through the use of electric shock or any procedure that involves the use of pressure points or joint locks;

(3) involves the directed release of a noxious, toxic, or otherwise unpleasant spray, mist, or substance near the student's face;

(4) denies adequate sleep, air, food, water, shelter, bedding, physical comfort, supervision, or access to a restroom facility;

(5) ridicules or demeans the student in a manner that adversely affects or endangers the learning or mental health of the student or constitutes verbal abuse;

(6) employs a device, material, or object that simultaneously immobilizes all four extremities, including any procedure that results in such immobilization known as prone or supine floor restraint;

(7) impairs the student's breathing, including any procedure that involves:

(A) applying pressure to the student's torso or neck; or

(B) obstructing the student's airway, including placing an object in, on, or over the student's mouth or nose or placing a bag, cover, or mask over the student's face;

(8) restricts the student's circulation;

(9) secures the student to a stationary object while the student is in a sitting or standing position;

(10) inhibits, reduces, or hinders the student's ability to communicate;

(11) involves the use of a chemical restraint;

(12) constitutes a use of timeout that precludes the student from being able to be involved in and progress appropriately in the required curriculum and, if applicable, toward the annual goals included in the student's individualized education program, including isolating the student by the use of physical barriers; or

(13) except as provided by Subsection (c), deprives the student of the use of one or more of the student's senses.

(b) A school district or school district employee or volunteer or an independent contractor of a school district may not apply an aversive technique, or by authorization, order, or consent, cause an aversive technique to be applied, to a student.

(c) Notwithstanding Subsection (a)(13), an aversive technique described by Subsection (a)(13) may be used if the technique is executed in a manner that:

(1) does not cause the student pain or discomfort; or

(2) complies with the student's individualized education program or behavior intervention plan.

(d) Nothing in this section may be construed to prohibit a teacher from removing a student from class under Section 37.002.

(e) In adopting procedures under this section, the commissioner shall provide guidance to school district employees, volunteers, and independent contractors of school districts in avoiding a violation of Subsection (b).

VI. DUE PROCESS REQUIREMENTS

A. Procedural Safeguards

All procedural safeguards, including required notice and consents, will be followed throughout the process of disciplinary action for students with disabilities.

B. Conference, Hearing, Review

TEC §37.009. Conference, Hearing, Review

(a) Not later than the third class day after the day on which a student is removed from class by the teacher under Section 37.002(b) or (d) or by the school principal or other appropriate administrator under Section 37.001(a)(2) or 37.006, the campus behavior coordinator or other appropriate administrator shall schedule a conference among the campus behavior coordinator or other appropriate administrator, a parent or guardian of the student, the teacher removing the student from class, if any, and the student. At the conference, the student is entitled to written or oral notice of the reasons for the removal, an explanation of the basis for the removal, and an opportunity to respond to the reasons for the removal. The student may not be returned to the regular classroom pending the conference. Following the conference, and whether or not each requested person is in attendance after valid attempts to require the person's attendance, the campus behavior coordinator, after consideration of the factors under Section 37.001(a)(4) shall order the placement of the student for a period consistent with the student code of conduct. Before ordering the suspension, expulsion, removal to a disciplinary alternative education program, or placement in a juvenile justice alternative education program of a student, the behavior coordinator must consider whether the student acted in self-defense, the intent or lack of intent at the time the student engaged in the conduct, the student's disciplinary history, and whether the student has a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct, regardless of whether the decision of teh behavior coordinator concerns a mandatory or discretionary action. If WCSESSA policy allows a student to appeal to the board of trustees or the board's designee a decision of the campus behavior coordinator or other appropriate administrator, other than an expulsion under Section 37.007, the decision of the board or the board's designee is final and may not be appealed. If the period of the placement is inconsistent with the guidelines included in the student code of conduct under Section 37.001(a)(5), the order must give notice of the inconsistency. The period of the placement may not exceed one year unless, after a review, the district determines that the student is a threat to the safety of other students or to district employees.

(b) If a student's placement in a disciplinary alternative education program is to extend beyond 60 days or the end of the next grading period, whichever is earlier, a student's parent or guardian is entitled to notice of and an opportunity to participate in a proceeding before the board of trustees of the WCSESSA or the board's designee, as provided by policy of the board of trustees of the district. Any decision of the board or the board's designee under this subsection is final and may not be appealed.

(c) Before it may place a student in a disciplinary alternative education program for a period that extends beyond the end of the school year, the board or the board's designee must determine that:
  (1) the student's presence in the regular classroom program or at the student's regular campus presents a danger of physical harm to the student or to another individual; or
  (2) the student has engaged in serious or persistent misbehavior that violates the district's student code of conduct.

(d) The board or the board's designee shall set a term for a student's placement in a disciplinary alternative education program. If the period of the placement is inconsistent with the guidelines included in the student code of conduct under Section 37.001(a)(5), the order must give notice of the inconsistency. The period of the placement may not exceed one year unless, after a review, the district determines that:
  (1) the student is a threat to the safety of other students or to district employees; or
  (2) extended placement is in the best interest of the student.

(e) A student placed in a disciplinary alternative education program shall be provided a review of the student's status, including a review of the student's academic status, by the board's designee at intervals not to exceed 120 days. In the case of a high school student, the board's designee, with the student's parent or guardian, shall review the student's progress towards meeting high school graduation requirements and shall establish a specific graduation plan for the student. The district is not required under this subsection to provide a course in the district's disciplinary alternative education program except as required by Section 37.008(l). At the review, the student or the student's parent or guardian must be given the opportunity to present arguments for the student's return to the regular classroom or campus. The student may not be returned to the classroom of the teacher who removed the student without that teacher's consent. The teacher may not be coerced to consent.

(f) Before a student may be expelled under Section 37.007, the board or the board's designee must provide the student a hearing at which the student is afforded appropriate due process as required by the federal constitution and which the student's parent or guardian is invited, in writing, to attend. At the hearing, the student is entitled to be represented by the student's parent or guardian or another adult who can provide guidance to the student and who is not an employee of the school district. If the school district makes a good-faith effort to inform the student and the student's parent or guardian of the time and place of the hearing, the

district may hold the hearing regardless of whether the student, the student's parent or guardian, or another adult representing the student attends. If the decision to expel a student is made by the board's designee, the decision may be appealed to the board. Before ordering the expulsion of a student, the board of trustees must consider whether the student acted in self-defense, the intent or lack of intent at the time the student engaged in the conduct, the student's disciplinary history, and whether the student has a disability that substaintially impairs the student's capacity to appreciate the wrongfulness of the student's conduct, regardless of whether the deicion of the board concerns a mandatory or discretionary action. The decision of the board may be appealed by trial de novo to a district court of the county in which the school district's central administrative office is located.

(g) The board or the board's designee shall deliver to the student and the student's parent or guardian a copy of the order placing the student in a disciplinary alternative education program under Section 37. 001, 37.002, or 37.006 or expelling the student under Section 37.007.

(h) If the period of an expulsion is inconsistent with the guidelines included in the student code of conduct under Section 37.001 (a)(5), the order must give notice of the inconsistency. The period of an expulsion may not exceed one year unless, after a review, the district determines that:

(1) the student is a threat to the safety of other students or to district employees; or

(2) extended placement is in the best interest of the student. After the school district notifies the parents or guardians of a student that the student has been expelled, the parent or guardian shall provide adequate supervision of the student during the period of expulsion.

(i) If a student withdraws from the district before an order for placement in a disciplinary alternative education program or expulsion is entered under this section, the principal or board, as appropriate, may complete the proceedings and enter an order. If the student subsequently enrolls in the district during the same or subsequent school year, the district may enforce the order at that time except for any period of the placement or expulsion that has been served by the student on enrollment in another district that honored the order. If the principal or board fails to enter an order after the student withdraws, the next district in which the student enrolls may complete the proceedings and enter an order.

(j) If, during the term of a placement or expulsion ordered under this section, a student engages in additional conduct for which placement in a disciplinary alternative education program or expulsion is required or permitted, additional proceedings may be conducted under this section regarding that conduct and the principal or board, as appropriate, may enter an additional order as a result of those proceedings.

C. Stay Put

(a) Previously during appeals, a child with a disability remained in the original placement, "stay-put". The new IDEA eliminates the "stay-put" requirement in the case of discipline. The "stay-put" rule still applies to the non-disciplinary dispute. Now during the time that an appeal is pending, the child will remain in the interim alternative educational setting (IAES) until the appeal is resolved or until the expiration of the suspension, whichever occurs first.(see D. and E. below)

(b) As described below in §300.532, the hearing officer is required to make a decision within 30 school days from the date the hearing is requested. Therefore, if the student is assigned to an IAES for 45 school days, the hearing officer's decision will come first.

(c) The IEP Team will pick the appropriate IAES. The timeframe for expiration of the IAES is determined by school personnel applying the "relevant disciplinary procedures applicable to children without disabilities" referred to in the Student Code of Conduct.

D. Appeal

§300.532 Appeal.

(a) General. The parent of a child with a disability who disagrees with any decision regarding placement under §§300.530 and 300.531, or the manifestation determination under §300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to § 300.507 and § 300.508(a) and (b).

(b) Authority of hearing officer.

(1) A hearing officer under §300.511 hears, and makes a determination regarding, an appeal requested under paragraph (a) of this section.

(2) In making the determination under paragraph (b)(1) of this section, the hearing officer may—

(i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of §300.530 or that the child's behavior was a manifestation of the child's disability; or

(ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

(3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the WCSESSA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

(c) Expedited due process hearing.

(1) Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of §§300.507 and 300.508(a) through (c) and §§300.510 through 300.514, except as provided in paragraph (c)(2) through ~~(5)~~ (4) of this section.

(2) The SEA or WCSESSA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.

(3) Unless the parents and the LEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this section, or agree to use the mediation process described in §300.506--

(i) A resolution meeting must occur within seven days of receiving notice, and

(ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of receipt of the due process complaint.

(4) A State may establish different State-imposed procedural rules for expedited due process hearings conducted under this section than it has established for other due process hearings, but, except for the timelines as modified in paragraph (c)(3) of this section, the State must ensure that the requirements in §§300.510 through 300.514 are met.

(5) The decisions on expedited due process hearings are appealable consistent with §300.514. (Authority: 20 U.S.C. 1415(k)(3) and (4)(B), 1415(f)(1)(A))

E. Placement During Appeals

§300.533 Placement during appeals.

When an appeal under §300.532 has been requested by either the parent or the WCSESSA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in §300.530 (c) or (g), whichever occurs first, unless the parent and the SEA or WCSESSA agree otherwise. (Authority: 20 U.S.C. 1415(k)(4)(A))

F. Resolution Meeting Prior to Due Process

§300.510 Resolution process.

(a) Resolution meeting.

(1) Within 15 days of receiving notice of the parents' due process complaint, and prior to the initiation of a due process hearing under §300.511, the LEA must convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that--

(i) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and

(ii) May not include an attorney of the WCSESSA unless the parent is accompanied by an attorney.

(2) The purpose of the meeting is for the parents of the child to discuss their due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.

(3) The meeting described in paragraph (a)(1) and (2) of this section need not be held if--

(i) The parent and the LEA agree in writing to waive the meeting; or

(ii) The parent and the LEA agree to use the mediation process described in §300.506.

(4) The parent and the LEA determine the relevant members of the IEP Team to attend the meeting.

(b) Resolution period.

(1) If the LEA has not resolved the due process complaint to the satisfaction of the parents within 30 days of the receipt of the due process complaint, the due process hearing must occur.

(2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under §300.515 begins at the expiration of this 30-day period.

(3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of a parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

(4) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in § 300.322(d)), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.

(5) If the LEA fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

(c) Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing in § 300.515(a) starts the day after one of the following events:

(1) Both parties agree in writing to waive the resolution meeting;

(2) After either the mediation or resolution meeting starts but before the end of the 30-day resolution period, the parties agree in writing that no agreement is possible;

(3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or WCSESSA withdraws from the mediation process.

(d) Written settlement agreement. If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is--

(1) Signed by both the parent and a representative of the agency who has the authority to bind the agency; and

(2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, or by the SEA, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements, pursuant to § 300.537.

(e) Agreement review period. If the parties execute an agreement pursuant to paragraph (c) of this section, a party may void the agreement within 3 business days of the agreement's execution.

(Authority: 20 U.S.C. 1415(f)(1)(B))

This process allows an opportunity for the school to resolve the parent's complaint. This can take up to 30 days and the timelines for a due process hearing begin to run only after those first 30 days. Also, there is an "expedited hearing" in the case of a disciplinary appeal. When the final regulations are completed, this may be resolved.

G. Notice of Disciplinary Actions (Student Moves to another District)

TEC §37.022. Notice of Disciplinary Action

(a) In this section:

(1) "Disciplinary action" means a suspension, expulsion, placement in an alternative education program, or other limitation in enrollment eligibility of a student by a district or school.

(2) "District or school" includes an independent school district, a home-rule school district, a campus or campus program charter holder, or an open-enrollment charter school.

(b) If a district or school takes disciplinary action against a student and the student subsequently enrolls in another district or school before the expiration of the period of disciplinary action, the governing body of the district or school taking the disciplinary action shall provide to the district or school in which the student enrolls, at the same time other records of the student are provided, a copy of the order of disciplinary action.

(c) Subject to Section 37.007(e), the district or school in which the student enrolls may continue the disciplinary action under the terms of the order or may allow the student to attend regular classes without completing the period of disciplinary action.

H. Protection for Students not Yet Eligible for Special Education

§300.534 Protections for children not yet eligible for special education and related services.

(a) General. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert

any of the protections provided for in this part if the WCSESSA had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) Basis of knowledge. The WCSESSA must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred—

(1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

(2) The parent of the child requested an evaluation of the child pursuant to §§300.300 through 300.311; or

(3) The teacher of the child, or other personnel of the WCSESSA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the WCSESSA or to other supervisory personnel of the agency.

(c) Exception. A public agency would not be deemed to have knowledge under paragraph (b) of this section if—

(1) The parent of the child—

(i) Has not allowed an evaluation of the child pursuant to §§300.300 through 300.311; or

(ii) Has refused services under this part; or

(2) The child has been evaluated in accordance with §§300.300 through 300.311 and determined to not be a child with a disability under this part.

(d) Conditions that apply if no basis of knowledge.

(1) If a WCSESSA does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with paragraph (d)(2) of this section.

(2) (i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under §300.530, the evaluation must be conducted in an expedited manner.

(ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services .

(iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with this part, including the requirements of §§300.530 through 300.536 and section 612(a)(1)(A) of the Act.

I. Noncustodial Parent

TEC §37.0091. Notice to Noncustodial Parent.

(a) A noncustodial parent may request in writing that the WCSESSA or school, for the remainder of the school year in which the request is received, provide that parent with a copy of any written notification relating to student misconduct under Section 37.006 or 37.007 that is generally provided by the WCSESSA or school to a student's parent or guardian.

(b) The WCSESSA or school may not unreasonably deny a request authorized by Subsection (a).

(c) Notwithstanding any other provision of this section, the WCSESSA or school shall comply with any applicable court order of which the WCSESSA or school has knowledge.

Added by Acts 2003, 78th Leg., ch. 1055, Sec. 14, eff. June 20, 2003.

VII. LAW ENFORCEMENT

§300.535 Referral to and action by law enforcement and judicial authorities.

(a) Rule of construction. Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(b) Transmittal of records.

(1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

(2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act. (Authority: 20 U.S.C. 1415(k)(6))

TEC §37.015. Reports to Local Law Enforcement; Liability

(a) The principal of a public or private primary or secondary school, or a person designated by the principal under Subsection (d), shall notify any school district police department and the police department of the municipality in which the school is located or, if the school is not in a municipality, the sheriff of the county in which the school is located if the principal has reasonable grounds to believe that any of the following activities occur in school, on school property, or at a school-sponsored or school-related activity on or off school property, whether or not the activity is investigated by school security officers:
(1) conduct that may constitute an offense listed under Section 508.149, Government Code;
(2) deadly conduct under Section 22.05, Penal Code;
(3) a terroristic threat under Section 22.07, Penal Code;
(4) the use, sale, or possession of a controlled substance, drug paraphernalia, or marihuana under Chapter 481, Health and Safety Code;
(5) the possession of any of the weapons or devices listed under Sections 46.01(1)-(14) or Section 46.01(16), Penal Code;
(6) conduct that may constitute a criminal offense under Section 71.02, Penal Code; or
(7) conduct that may constitute a criminal offense for which a student may be expelled under Section 37.007(a), (d), or (e).

(b) A person who makes a notification under this section shall include the name and address of each student the person believes may have participated in the activity.

(c) A notification is not required under Subsection (a) if the person reasonably believes that the activity does not constitute a criminal offense.

(d) The principal of a public or private primary or secondary school may designate a school employee who is under the supervision of the principal to make the reports required by this section.

(e) The person who makes the notification required under Subsection (a) shall also notify each instructional or support employee of the school who has regular contact with a student whose conduct is the subject of the notice.

(f) A person is not liable in civil damages for reporting in good faith as required by this section.

TEC §37.016. Report of Drug Offenses; Liability

A teacher, school administrator, or school employee is not liable in civil damages for reporting to a school administrator or governmental authority, in the exercise of professional judgment within the scope of the teacher's, administrator's, or employee's duties, a student whom the teacher suspects of using, passing, or selling, on school property:

(1) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code;
(2) a dangerous drug, as defined by Chapter 483, Health and Safety Code;
(3) an abusable glue or aerosol paint, as defined by Chapter 485, Health and Safety Code, or a volatile chemical, as listed in Chapter 484, Health and Safety Code, if the substance is used or sold for the purpose of inhaling its fumes or vapors; or
(4) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

VIII. DISCIPLINARY RECORDS

§300.229 Disciplinary information.

(a) The State may require that a public agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children.

(b) The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child.

(c) If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child. (Authority: 20 U.S.C. 1413(i))

§300.535 Referral to and action by law enforcement and judicial authorities.

(b) Transmittal of records.

(1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

(2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act. (Authority: 20 U.S.C. 1415(k)(6))

TEC § 37.017. Destruction of Certain Records.

Information received by a school district under Article 15.27, Code of Criminal Procedure, may not be attached to the permanent academic file of the student who is the subject of the report. The school district shall destroy the information at the end of the school year in which the report was filed.

TEC §37.008. Disciplinary Alternative Education Programs (DAEP)

(j) If a student placed in a disciplinary alternative education program enrolls in another school district before the expiration of the period of placement, the board of trustees of the district requiring the placement shall provide to the district in which the student enrolls, at the same time other records of the student are provided, a copy of the placement order. The district in which the student enrolls may continue the disciplinary alternative education program placement under the terms of the order or may allow the student to attend regular classes without completing the period of placement. A district may take any action permitted by this subsection if:

(1) the student was placed in a disciplinary alternative education program by an open-enrollment charter school under Section 12.131 and the charter school provides to the district a copy of the placement order; or

(2) the student was placed in a disciplinary alternative education program by a school district in another state and:

(A) the out-of-state district provides to the district a copy of the placement order; and

(B) the grounds for the placement by the out-of-state district are grounds for placement in the district in which the student is enrolling.

(j-1) If a student was placed in a disciplinary alternative education program by a school district in another state for a period that exceeds one year and a school district in this state in which the student enrolls continues the placement under Subsection (j), the district shall reduce the period of the placement so that the aggregate period does not exceed one year unless, after a review, the district determines that:

(1) the student is a threat to the safety of other students or to district employees; or

(2) extended placement is in the best interest of the student.

IX. COMPULSORY ATTENDANCE

TAC § 25.086. Exemptions. (from compulsory attendance)

(a) A child is exempt from the requirements of compulsory school attendance if the child:
- (1) attends a private or parochial school that includes in its course a study of good citizenship;
- (2) is eligible to participate in a school district's special education program under Section 29.003 and cannot be appropriately served by the resident district;
- (3) has a physical or mental condition of a temporary and remediable nature that makes the child's attendance infeasible and holds a certificate from a qualified physician specifying the temporary condition, indicating the treatment prescribed to remedy the temporary condition, and covering the anticipated period of the child's absence from school for the purpose of receiving and recuperating from that remedial treatment;
- (4) is expelled in accordance with the requirements of law in a school district that does not participate in a mandatory juvenile justice alternative education program under Section 37.011;
- (5) is at least 17 years of age and:
  - (A) is attending a course of instruction to prepare for the high school equivalency examination, and:
    - (i) has the permission of the child's parent or guardian to attend the course;
    - (ii) is required by court order to attend the course;
    - (iii) has established a residence separate and apart from the child's parent, guardian, or other person having lawful control of the child; or
    - (iv) is homeless as defined by 42 U.S.C. Section 11302; or
  - (B) has received a high school diploma or high school equivalency certificate;
- (6) is at least 16 years of age and is attending a course of instruction to prepare for the high school equivalency examination, if:
  - (A) the child is recommended to take the course of instruction by a public agency that has supervision or custody of the child under a court order; or
  - (B) the child is enrolled in a Job Corps training program under the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 et seq.);
- (7) is at least 16 years of age and is enrolled in a high school diploma program under Chapter 18;
- (8) is enrolled in the Texas Academy of Mathematics and Science under Subchapter G, Chapter 105;
- (9) is enrolled in the Texas Academy of Leadership in the Humanities;
- (10) is enrolled in the Texas Academy of Mathematics and Science at The University of Texas at Brownsville;
- (11) is enrolled in the Texas Academy of International Studies; or
- (12) is specifically exempted under another law.

(b) This section does not relieve a school district in which a child eligible to participate in the district's special education program resides of its fiscal and administrative responsibilities under Subchapter A, Chapter 29, or of its responsibility to provide a free appropriate public education to a child with a disability.

§129.1043. Truancy Minimum Standards.

The minimum standards for the truancy prevention measure(s) implemented by a school district under Texas Education Code, §25.0915, include:

(1) identifying the root cause of the student's unexcused absences and actions to address each cause;

(2) maintaining ongoing communication with students and parents on teh actions to be taken to improve attendance;

(3) establishing reasonable timelines for completion of the truancy prevention measure; and

(4) establishing procedures to notify the admission, review, and dismissal committee or the Section 504 committee of attendance issues relating to a student with a disability and ensure that the committee considers whether the student's attendance issues warrant an evaluation, a reevaluation, and/or modifications to the student's individualized education program or Section 504 plan, as appropriate.

If the special education student in the WCSESSA is having attendance issues that may be related to the student's disability, the ARD/IEP Committee will meet to develop a plan of action to address this behavior.

X. STUDENT DISCIPLINE CHART

Please refer to the most current Student Discipline Chart© developed by The Texas School Administrators' Legal Digest. Phone 512.478.2113, Website: *http://www.ed311.com/law-charts-cart66/*
If you have any questions please contact the Special Education Director.

DISCLAIMER
The WCSESSA will follow local district Board Policy regarding required laws for discipline of students with disabilities. These Operating Guidelines do not include all of the numerous regulations regarding student discipline, however, they do include the specific requirements pertaining to special education students with disabilities.

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Section 7 - PROCEDURAL SAFEGUARDS SECTION

I. PROCEDURAL SAFEGUARDS NOTICE

§300.504 Procedural safeguards notice.

(a) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only 1 time a school year, except that a copy also must be given to the parents--

(1) Upon initial referral or parent request for evaluation;

(2) Upon receipt of the first State complaint under §§300.151 through 300.153 or a due process complaint under §300.507 in a school year; and

(3) In accordance with the discipline procedures in 300.530(h); and

(4) Upon request by a parent.

The WCSESSA will provide the notice of procedural safeguards to each parent of a child with a disability at least 1 time per year at the annual ARD. A copy will also be given as addressed in (a) (1-3) above. The current copy of the TEA publication " A Guide to the Admission, Review and Dismissal Process" will also be provided prior to the first ARD committee meeting or upon a parent's request. Other information that may be given to the parent is:

Texas Project FIRST (Families Information Resources Support and Training) is a project of the TEA and is committed to providing accurate and consistent information to parents and families of students with disabilities. www.texasprojectfirst.org Partners Resource Network (PRN) is a non-profit agency that operates the federally funded Parent Training and Information Centers (PTIs) in Texas. TEA Toll Free Parent Information Line: 1-800-252-9668 TTY: 512-475-3540 Relay Texas 711

(b) Internet Web site. The WCSESSA may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists.

(c) Contents. The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under §300.148, §§300.151 through 300.153, §300.300, §§300.502 through 300.503, §§300.505 through .518, §300.520, §§300.530 through 300.536, and §§300.610 through 300.625 relating to-

(1) Independent educational evaluations;

(2) Prior written notice;

(3) Parental consent;

(4) Access to education records;

(5) Opportunity to present and resolve complaints through the due process complaint or State complaint procedures, including--

(i) The time period in which to file a complaint;

(ii) The opportunity for the agency to resolve the complaint; and

(iii) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;

(6) The availability of mediation;

(7) The child's placement during the pendency of any due process complaint;

(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) State-level appeals (if applicable in that State);

(12) Civil actions, including the time period in which to file those actions; and

(13) Attorneys' fees.

(d) Notice in understandable language. The notice required under paragraph (a) of this section must meet the requirements of §300.503(c). *(found in Section II below) (Authority: 20 U.S.C. 1415(d)(1) and (2))*

TEC §29.0163. PROTECTION OF THE RIGHTS OF MILITARY FAMILIES WITH CHILDREN WITH DISABILITIES.

(a) In this section, "service member" means a member of:

(1) the armed forces;
(2) the Commissioned Corps of the National Oceanic and Atmospheric Administration; or
(3) the Commissioned Corps of the United States Public Health Service.

(b) The agency must include in the notice of procedural safeguards that the statute of limitations for the parent of a student to request an impartial due process hearing under 20 U.S.C. Section 1415(b) may be tolled if the parent is an active-duty service member and 50 U.S.C. Section 3936 applies to the parent.

(c) The commissioner shall adopt rules to implement this section.

SECTION 2. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

§300.29 Native language.

(a) Native language, when used with respect to an individual who is limited English proficient, means the following:

(1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section.

(2) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

(b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication). (Authority: 20 U.S.C. 1401(20))

TAC § 26.0081. Right to Information Concerning Special Education and Education of Students With Learning Difficulties.

(a) The agency shall produce and provide to school districts sufficient copies of a comprehensive, easily understood document that explains the process by which an individualized education program is developed for a student in a special education program and the rights and responsibilities of a parent concerning the process. The document must include information a parent needs to effectively participate in an admission, review, and dismissal committee meeting for the parent's child.

(b) The agency will ensure that each school district provides the document required under this section to the parent as provided by 20 U.S.C. Section 1415(b):

(1) as soon as practicable after a child is referred to determine the child's eligibility for admission into the district's special education program, but at least five school days before the date of the initial meeting of the admission, review, and dismissal committee; and

(2) at any other time on reasonable request of the child's parent.

(c) The agency shall produce and provide to school districts a written explanation of the options and requirements for providing assistance to students who have learning difficulties or who need or may need special education. The explanation must state that a parent is entitled at any time to request an evaluation of the parent's child for special education services under Section 29.004 or for aids, accommodations, or services under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794). Each school year, each district shall provide the written explanation to a parent of each district student by including the explanation in the student handbook or by another means.

(d) Each school year, each school district shall notify a parent of each child, other than a child enrolled in a special education program under Subchapter A, Chapter 29, who receives assistance from the district for learning difficulties, including through the use of intervention strategies, as that term is defined by Section 26.004, that the district provides that assistance to the child. The notice must:

(1) be provided when the child begins to receive the assistance for that school year;

(2) be written in English or, to the extent practicable, the parent's native language; and

(3) include:

(A) a reasonable description of the assistance that may be provided to the child, including any intervention strategies that may be used;

(B) information collected regarding any intervention in the base tier of a multi-tiered system of supports that has previously been used with the child;

(C) an estimate of the duration for which the assistance, including through the use of intervention strategies, will be provided;

(D) the estimated time frames within which a report on the child's progress with the assistance, including any intervention strategies used, will be provided to the parent; and

(E) a copy of the explanation provided under Subsection (c).

(e) The notice required under Subsection (d) may be provided to a child's parent at a meeting of the team established for the child under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), if applicable.

II. PRIOR WRITTEN NOTICE

§300.503 Prior notice by the Wood County SSA; content of notice.

(a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the WCSESSA--

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

According to OSEP Letter to Lieberman August 15, 2008, the Prior Written Notice form must be sent to the parents or adult student:

- *after an IEP meeting to inform parents of the final action on a proposal or refusal to initiate or change the identification, evaluation, or educational placement of the student or the provision of a FAPE,*
- *regardless if the parent is in attendance and in agreement with decisions,*
- *regardless if the parent requests the change or the district is making a change,*
- *after a proposal to revise a child's IEP, which typically involves a change to the type, amount, or location of special education and related services being provide to a child.*
- *the WCSESSA may use the IEP as part of the prior written notice so long as the IEP / document(s) the parent receives meet all the requirements in §300.503 Fed.Reg.46691(August 14, 2006)*

(b) Content of notice. The notice required under paragraph (a) of this section must include--

(1) A description of the action proposed or refused by the agency;

(2) An explanation of why the agency proposes or refuses to take the action;

(3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

(4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

(5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;

(6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and

(7) A description of other factors that are relevant to the agency's proposal or refusal.

The regulation §300.503 is required for all Notices including:

- *Notice of Evaluation,*
- *Notice of ARD / IEP Meeting, and*
- *Notice of Proposal or Refusal.*

All Prior Written Notice forms will contain the required information listed above. All areas will be addressed when completing the appropriate Notice form.

(c) Notice in understandable language.

(1) The notice required under paragraph (a) of this section must be--

(i) Written in language understandable to the general public; and

(ii) 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.

(2) If the native language or other mode of communication of the parent is not a written language, the WCSESSA must take steps to ensure--

(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(ii) That the parent understands the content of the notice; and

(iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met.

(Authority: 20 U.S.C. 1415(b)(3) and (4), 1415(c)(1), 1414(b)(1))

§300.505 Electronic mail.

A parent of a child with a disability may elect to receive notices required by §§300.503 *(Prior Written Notice)* **, 300.504** *(Proc. Safeguards/Notice)* **, and 300.508** *(Due Process complaints)* **by an electronic mail communication, if the WCSESSA makes that option available. (Authority: 20 U.S.C. 1415(n))**

In Texas, the invitation to the ARD/IEP meeting must include the content requirements of the Prior Written Notice. The WCSESSA ensures these requirements are met while caution is taken to convey that no decisions have been made in advance of the IEP meeting. The notice provided to the parents and/or adult student in advance of the IEP meeting is a proposal to convene the meeting.

§300.322 Parent Participation.

(a) WCSESSA responsibility—general. The Wood County SSA must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including--

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

3 Prior Notice Attempts to ensure parent participation in the IEP meeting.

The WCSESSA will make advance attempts to notify parents of ARD/IEP meetings and arrange a mutually agreeable time and location.

1. *The first Prior Written Notice of the ARD/IEP meeting form is provided in writing 2 weeks (10 working days) prior to the scheduled ARD/IEP date. This early notice will allow more time to contact the parent and then proceed at the first scheduled date and time. The Notice form includes options to agree to the proposed date, change the date, hold the meeting on the phone or suggest the district proceed without the parent in attendance. A copy of the completed Notice form sent to the parent is maintained in the student eligibility file as documentation.*
2. *The second attempt to notify the parents of the ARD will also be in writing (if there is no response from the parent after the first notice). The WCSESSA will copy the first notice form and send it as the second Notice of ARD/IEP meeting.*
3. *The third Notice contact will be attempted to get parental participation if there is no response from the first two attempts. After 3 attempts and no response, the WCSESSA may go forward with the ARD meeting as scheduled.*

The first attempt MUST be in written form however the staff may call and discuss the proposed date with parents in order to pick a reasonable date for both parties for the written Notice. The second Notice will also be in written form using a copy of the first Notice sent and the third Notice may be a follow-up phone call to home and work. All dates of scheduling attempts and the initials of personnel attempting contact must be documented on the district Notice form and filed in the student eligibility folder.

Purpose, Time, Location, Attendance - (Notice)

§300.322 Parent Participation.

(b) Information provided to parents.

(1) The notice required under paragraph (a)(1) of this section must--

(i) Indicate the purpose, time, and location of the meeting and who will be in attendance; *The WCSESSA will indicate the positions, and not the names, of those individuals participating in the IEP meeting.* **and**

(ii) Inform the parents of the provisions in §300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and §300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).

(2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must--

(i) Indicate--

(A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with §300.320(b); and

(B) That the agency will invite the student; and

(ii) Identifies any other agency that will be invited to send a representative.

(c) Other methods to ensure parent participation . If neither parent can attend an IEP Team meeting, the WCSESSA must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with §300.328 (related to alternative means of meeting participation).

(d) Conducting an IEP meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the WCSESSA is unable to convince the parents that they should attend. In this case, the WCSESSA must keep a record of its attempts to arrange a mutually agreed on time and place such as:

(1) Detailed records of telephone calls made or attempted and the results of those calls;

(2) Copies of correspondence sent to the parents and any responses received; and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) Use of interpreters or other action, as appropriate. The WCSESSA must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(f) Parent copy of child's IEP. The WCSESSA must give the parent a copy of the child's IEP at no cost to the parent. (Authority: 20 U.S.C. 1414(d)(1)(B)(i))

§300.321 IEP Team Attendance.

(f) Initial IEP meeting for child under Part C. In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services. (Authority: 20 U.S.C. 1401(30), 1414(d)(1)(A)(7),(B))

To see the Dyslexia rule in its entirety go to Section 1. Intervention/Referral or to review the TEA sample notice form, visit this link:
https://tea.texas.gov/Academics/Special_Student_Populations/Special_Education/Programs_and_Services/Response_to_Intervention/

To read the 2019 Notice of Rights for certain student evaluations TAC §29.023. NOTICE OF RIGHTS in its entirety go to Section 1. Intervention/Referral.

III. CONSENT

§300.9 Consent. Consent means that--
(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;
(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
(c) (1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.
(2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).
(Authority: 20 U.S.C. 1414(a)(1)(D))
(3) If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the Wood County SSA is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

§300.300 Parental consent.
(a) Parental consent for initial evaluation.
(1) (i) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under §300.8 must after providing notice consistent with §§300.503 and 300.504, obtain informed consent from the parent of the child before conducting the evaluation.
(ii) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.
(iii) The WCSESSA must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.
(2) For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the WCSESSA is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if--
(i) Despite reasonable efforts to do so, the WCSESSA cannot discover the whereabouts of the parent of the child;
(ii) The rights of the parents of the child have been terminated in accordance with State law; or
(iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.
(3) (i) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under paragraph (a)(1) of this section, or the parent fails to respond to a request to provide consent, the WCSESSA may , but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516), if appropriate, except to the extent inconsistent with State law relating to such parental consent.
If a parent refuses consent for an initial evaluation, a notation is made on the Consent for Initial Evaluation. After discussion with the special education director/supervisor, a Refusal of Service form is completed by the assessment personnel and provided to the parent with a copy in the student's file.
(ii) The WCSESSA does not violate its obligation under §§300.111 and 300.301 through §§300.311 if it declines to pursue the evaluation.

(b) Parental consent for services.

(1) A public agency (WCSESSA) that is responsible for making FAPE available to a child with a disability must seek to obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

(2) The WCSESSA must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

The WCSESSA must keep a record of its "reasonable efforts" to obtain parental consent including:
(1) Detailed records of telephone calls made or attempted and the results of those calls;
(2) Copies of correspondence sent to the parents and any responses received; and
(3) Detailed records of meetings/conference or visits made to the parent's home or place of employment and the results of those visits.

(3) If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the Wood County SSA --

(i) May not use the procedures in subpart E of this part (including the mediation procedures under Sec. 300.506 or the due process procedures under Sec. Sec. 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;

(ii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and

(iii) Is not required to convene an IEP Team meeting or develop an IEP under Sec. Sec. 300.320 and 300.324 for the child.

(4) 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 WCSESSA--

(i) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with Sec. 300.503 before ceasing the provision of special education and related services;

(ii) May not use the procedures in subpart E of this part (including the mediation procedures under Sec. 300.506 or the due process procedures under Sec. Sec. 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;

(iii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and

(iv) Is not required to convene an IEP Team meeting or develop an IEP under Sec. Sec. 300.320 and 300.324 for the child for further provision of special education and related services.

Guidance on Revocation of Consent can be found at TEA link:
http://tea.texas.gov/Academics/Special_Student_Populations/Special_Education/Parent_and_Family_Resources/Guidance_on_Revocation_of_Parental_Consent_for_Special_Education_Services/
Campus staff should contact the Special Education Administration when the parent or adult student Revokes Consent for Special Education Services. Documentation in writing of the parent or adult student's revocation will be on the required district form provided to you. As stated in (b)(4)(i) above, use of the district provided form will assure that Prior Written Notice federal requirements (listed on page 703) are specifically documented prior to ceasing services. Parent signature on this PWN form can suffice as written request from the parent.

When a parent revokes consent for the provision of special education and related services, the WCSESSA may inquire as to why a parent is revoking consent , but may not require a parent to provide an explanation, either orally or in writing, prior to ceasing the provision of special education services.
Prior Written Notice is provided to the parent promptly after receiving written revocation of consent for provision of special education services.
The WCSESSA cannot discontinue services (following a revocation of consent) until the parent receives the Prior Written Notice form. The PWN states WCSESSA will provide parents the "reasonable time" and information needed to make informed decisions regarding their child's continued need for services. In Texas, a reasonable time means at least five school days.

(c) Parental consent for reevaluations.

(1) Subject to paragraph (c)(2) of this section, the WCSESSA

(i) Must obtain informed parental consent, in accordance with §300.300(a)(1), prior to conducting any reevaluation of a child with a disability.

(ii) If the parent refuses to consent to the reevaluation the WCSESSA may, but is not required to pursue the reevaluation by using the consent override procedures described in paragraph (a)(3) of this section.

(iii) The WCSESSA does not violate its obligation under §300.111 and §§300.301 through 300.311 if it declines to pursue the evaluation or reevaluation.

(2) The informed parental consent described in paragraph (c)(1) of this section need not be obtained if the WCSESSA can demonstrate that--

(i) It made reasonable efforts to obtain such consent; and

(ii) The child's parent has failed to respond.

Parental consent is not required if the evaluation team determines that additional data are not needed for an evaluation or reevaluation. In all instances, the parents have the opportunity to be part of the team which makes that determination. Therefore, no parental consent is necessary if no additional data are needed to conduct the evaluation or reevaluation. If the team determines the review of existing evaluation data are sufficient to determine whether the child is a child with a disability and that no additional data are needed to determine whether the child qualifies as a child with a disability, parental consent for an evaluation is not required.

Evaluations occur as a regular part of student progress monitoring to assess whether the child has mastered the information. If the evaluation is crucial to determining a child's continued eligibility or to determine whether "services should be increased or decreased" that is considered a reevaluation requiring written parental consent. (OSEP Letter to Sarzynski - May 6, 2008)

FBA - Functional Behavior Evaluation needs parental consent when completed to:
** develop or modify a Behavior Intervention Plan*
** determine whether the child is a child with a disability and the extent of special education and related services needed,*
** determine whether the positive behavioral interventions and supports set out in the current IEP for a child with a disability would be effective in enabling the child to make progress toward the IEP goals/objectives, or*
** determine whether the behavioral components of the IEP would need to be revised.*

(d) Other consent requirements.

(1) Parental consent is not required before -

(i) Reviewing existing data as part of an evaluation or a reevaluation; or

(ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

(2) In addition to the parental consent requirements described in paragraphs (a), (b), and (c) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.

(3) The WCSESSA may not use a parent's refusal to consent to one service or activity under paragraphs (a), (b), (c) and (d)(2) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.

(4) (i) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the WCSESSA may not use the consent override procedures (described in paragraphs (a)(3) and (c)(1) of the section); and

(ii) The WCSESSA is not required to consider the child as eligible for services under §§300.132 through 300.144.

(5) To meet the reasonable efforts requirement in paragraphs (a)(1)(iii), (a)(2)(i), (b)(2), and (c)(2)(i) of this section, the WCSESSA must document its attempts to obtain parental consent using the procedures in §300.322(d). *(found on pg 711 - conducting IEP meeting without parent in attendance)*

For more information on consent for observations/screenings, see Section 2: FIE.
For more information on consent for excusal see Section 4 Amendments.

*For **Consent to Release Records**, the WCSESSA may release records without parent consent based upon Family Educational Rights and Privacy Act (34 CFR § 99.31) to:*

- **School officials with legitimate educational interest:**

- **Other schools to which a student is transferring;**
- **Specified officials for audit or evaluation purposes;**
- **The disclosure is in connection with financial aid for which the student has applied or which the student has received if the information is necessary for such purposes as to determine eligibility, the amount, the conditions for the student to apply for or receive financial aid or enforce the terms and conditions of the aid (34 CFR § 99.31(a)(4));** *written agreements following Appendix A located in FERPA will be completed as necessary. Search for page 75645. http://www.gpo.gov/fdsys/pkg/FR-2011-12-02/pdf/2011-30683.pdf*
- **Organizations conducting certain studies for or on behalf of the school;**
- **Accrediting organizations;**
- **To comply with a judicial order or lawfully issued subpoena;**
- **Appropriate officials in cases of health and safety emergencies; and**
- **State and local authorities, within a juvenile justice system, pursuant to specific State law.**

Parental Consent to Release records will be obtained in all other instances not listed above. For the entire FERPA regulations and specifics of each bulleted item above, please see the website below:
http://www.gpo.gov/fdsys/pkg/FR-2011-12-02/pdf/2011-30683.pdf
See the following pages for V. Confidentiality of Information .
Transfer of Records to other District or from other District
Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the parties listed above.

§300.154. Methods of ensuring services.
(d) Children with disabilities who are covered by public benefits or insurance.

(1) The WCSESSA may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this part, as permitted under the public benefits or insurance program, except as provided in paragraph (d)(2) of this section.

(2) With regard to services required to provide FAPE to an eligible child under this part, the WCSESSA--

(i), *(ii), and (iii) are in section 8- Administration*

(iv) (A) Must obtain parental consent consistent with §300.9 each time that access to public benefits or insurance is sought; and

(B) Notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

Informed parental consent may be obtained one time for the specific services and duration of services identified in a child's IEP. The WCSESSA is not required to obtain a separate consent each time a Medicaid agency or other public insurer or public program is billed for the provision of required services. (OSEP Memorandum to State Directors May 3, 2007) Use form Consent to Access Public Benefits or Consent to Access Private Insurance.

TEC §29.0041. Information and Consent for Certain Psychological Examinations or Tests

(a) On request of a child's parent, before obtaining the parent's consent under 20 U.S.C. Section 1414 for the administration of any psychological examination or test to the child that is included as part of the evaluation of the child's need for special education, the WCSESSA 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 individualized education program for the child.

(b) If the WCSESSA 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 under Subsection (a), the WCSESSA shall provide the information described by Subsections (a)(1) and (2) to the child's parent regarding the additional examination or test and shall obtain additional consent for the examination or test.

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

TAC § 26.009. Consent Required for Certain Activities (videotaping)

(a) An employee of the WCSESSA will obtain the written consent of a child's parent before the employee may:
(1) conduct a psychological examination, test, or treatment, unless the examination, test, or treatment is required under Section 38.004 or state or federal law regarding requirements for special education; or
(2) make or authorize the making of a videotape of a child or record or authorize the recording of a child's voice.

(b) An employee of the WCSESSA is **not required to obtain the consent of a child's parent** before the employee may make a videotape of a child or authorize the recording of a child's voice if the videotape or voice recording is to be used only for:
(1) purposes of safety, including the maintenance of order and discipline in common areas of the school or on school buses;
(2) a purpose related to a cocurricular or extracurricular activity;
(3) a purpose related to regular classroom instruction; or
(4) media coverage of the school.
(5) a purpose related to the promotion of student safety under Section 29.022.

TEC §29.022. VIDEO SURVEILLANCE OF SPECIAL EDUCATION SETTINGS.

In order to promote student safety, on receipt of a written request authorized under Subsection (a-1), a school district or open-enrollment charter school shall provide equipment, including a video camera, to the school or schools in the district or the charter school campus or campuses specified in the request. A school or campus that receives equipment as provided by this subsection shall place, operate, and maintain one or more video cameras in self-contained classrooms and other special education settings in which a majority of the students in regular attendance are provided special education and related services and are assigned to one or more self-contained classrooms or other special education settings for at least 50 percent of the instructional day, provided that:
(1) a school or campus that receives equipment as a result of the request by a parent or staff member is required to place equipment only in classrooms or settings in which the parent's child is in regular attendance or to which the staff member is assigned, as applicable; and
(2) a school or campus that receives equipment as a result of the request by a board of trustees, governing body, principal, or assistant principal is required to place equipment only in classrooms or settings identified by the requestor, if the requestor limits the request to specific classrooms or settings subject to this subsection.

(a-1) For purposes of Subsection (a):
(1) a parent of a child who receives special education services in one or more self-contained classrooms or other special education settings may request in writing that equipment be provided to the school or campus at which the child receives those services;
(2) a board of trustees or governing body may request in writing that equipment be provided to one or more specified schools or campuses at which one or more children receive special education services in self-contained classrooms or other special education settings;
(3) the principal or assistant principal of a school or campus at which one or more children receive special education services in self-contained classrooms or other special education settings may request in writing that equipment be provided to the principal's or assistant principal's school or campus; and
(4) a staff member assigned to work with one or more children receiving special education services in self-contained classrooms or other special education settings may request in writing that equipment be provided to the school or campus at which the staff member works.

(a-2) Each school district or open-enrollment charter school shall designate an administrator at the primary administrative office of the district or school with responsibility for coordinating the provision of equipment to schools and campuses in compliance with this section.

(a-3) A written request must be submitted and acted on as follows:
(1) a parent, staff member, or assistant principal must submit a request to the principal or the principal's designee of the school or campus addressed in the request, and the principal or designee must provide a copy of the request to the administrator designated under Subsection (a-2);
(2) a principal must submit a request by the principal to the administrator designated under Subsection (a-2); and
(3) a board of trustees or governing body must submit a request to the administrator designated under Subsection (a-2), and the administrator must provide a copy of the request to the principal or the principal's designee of the school or campus addressed in the request.

(b) A school or campus that places a video camera in a classroom or other special education setting in accordance with Subsection (a) shall operate and maintain the video camera in the classroom or setting, as long as the classroom or setting continues to satisfy the requirements under Subsection (a), for the remainder of the school year in which the school or campus received the request, unless the requestor withdraws the request in writing. If for any reason a school or campus will discontinue operation of a video camera during a school year, not later than the fifth school day before the date the operation of the video camera will be discontinued, the school or campus must notify the parents of each student in regular attendance in the classroom or setting that operation of the video camera will not continue unless requested by a person eligible to make a request under Subsection (a-1). Not later than the 10th school day before the end of each school year, the school or campus must notify the parents of each student in regular attendance in the classroom or setting that operation of the video camera will not continue during the following school year unless a person eligible to make a request for the next school year under Subsection (a-1) submits a new request.

(c) Except as provided by Subsection (c-1), video cameras placed under this section must be capable of:

(1) covering all areas of the classroom or other special education setting, including a room attached to the classroom or setting used for time-out; and

(2) recording audio from all areas of the classroom or other special education setting, including a room attached to the classroom or setting used for time-out.

(c-1) The inside of a bathroom or any area in the classroom or other special education setting in which a student's clothes are changed may not be visually monitored, except for incidental coverage of a minor portion of a bathroom or changing area because of the layout of the classroom or setting.

(d) Before a school or campus activates a video camera in a classroom or other special education setting under this section, the school or campus shall provide written notice of the placement to all school or campus staff and to the parents of each student attending class or engaging in school activities in the classroom or setting.

(e) Except as provided by Subsection (e-1), a school district or open-enrollment charter school shall retain video recorded from a video camera placed under this section for at least three months after the date the video was recorded.

(e-1) If a person described by Subsection (i) requests to view a video recording from a video camera placed under this section, a school district or open-enrollment charter school must retain the recording from the date of receipt of the request until the person has viewed the recording and a determination has been made as to whether the recording documents an alleged incident. If the recording documents an alleged incident, the district or school shall retain the recording until the alleged incident has been resolved, including the exhaustion of all appeals.

(f) A school district or open-enrollment charter school may solicit and accept gifts, grants, and donations from any person for use in placing video cameras in classrooms or other special education settings under this section.

(g) This section does not:

(1) waive any immunity from liability of a school district or open-enrollment charter school, or of district or school officers or employees; or

(2) create any liability for a cause of action against a school district or open-enrollment charter school or against district or school officers or employees.

(h) A school district or open-enrollment charter school may not:

(1) allow regular or continual monitoring of video recorded under this section; or

(2) use video recorded under this section for teacher evaluation or for any other purpose other than the promotion of safety of students receiving special education services in a self-contained classroom or other special education setting.

(i) A video recording of a student made according to this section is confidential and may not be released or viewed except as provided by this subsection or Subsection (i-1) or (j). A school district or open-enrollment charter school shall release a recording for viewing by:

(1) an employee who is involved in an alleged incident that is documented by the recording and has been reported to the district or school, on request of the employee;

(2) a parent of a student who is involved in an alleged incident that is documented by the recording and has been reported to the district or school, on request of the parent;

(3) appropriate Department of Family and Protective Services personnel as part of an investigation under Section 261.406, Family Code;

(4) a peace officer, a school nurse, a district or school administrator trained in de-escalation and restraint techniques as provided by commissioner rule, or a human resources staff member designated by the board of trustees of the school district or the governing body of the open-enrollment charter school in response to a report of an alleged incident or an investigation of district or school personnel or a report of alleged abuse committed by a student; or

(5) appropriate agency or State Board for Educator Certification personnel or agents as part of an investigation.

(i-1) A contractor or employee performing job duties relating to the installation, operation, or maintenance of video equipment or the retention of video recordings who incidentally views a video recording is not in violation of Subsection (i).

(j) If a person described by Subsection (i)(4) or (5) who views the video recording believes that the recording documents a possible violation under Subchapter E, Chapter 261, Family Code, the person shall notify the Department of Family and Protective Services for investigation in accordance with Section 261.406, Family Code. If any person described by Subsection (i)(3), (4), or (5) who views the recording believes that the recording documents a possible violation of district or school policy, the person may allow access to the recording to appropriate legal and human resources personnel. A recording believed to document a possible violation of district or school policy relating to the neglect or abuse of a student may be used as part of a disciplinary action against district or school personnel and shall be released at the request of the student's parent in a legal proceeding. This subsection does not limit the access of a student's parent to a record regarding the student under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g) or other law.

(k) The commissioner may adopt rules to implement and administer this section, including rules regarding the special education settings to which this section applies.

(l) A school district or open-enrollment charter school policy relating to the placement, operation, or maintenance of video cameras under this section must:

(1) include information on how a person may appeal an action by the district or school that the person believes to be in violation of this section or a policy adopted in accordance with this section, including the appeals process under Section 7.057;

(2) require that the district or school provide a response to a request made under this section not later than the seventh school business day after receipt of the request by the person to whom it must be submitted under Subsection (a-3) that authorizes the request or states the reason for denying the request;

(3) except as provided by Subdivision (5), require that a school or a campus begin operation of a video camera in compliance with this section not later than the 45th school business day, or the first school day after the 45th school business day if that day is not a school day, after the request is authorized unless the agency grants an extension of time;

(4) permit the parent of a student whose admission, review, and dismissal committee has determined that the student's placement for the following school year will be in a classroom or other special education setting in which a video camera may be placed under this section to make a request for the video camera by the later of:

(A) the date on which the current school year ends; or

(B) the 10th school business day after the date of the placement determination by the admission, review, and dismissal committee; and

(5) if a request is made by a parent in compliance with Subdivision (4), unless the agency grants an extension of time, require that a school or campus begin operation of a video camera in compliance with this section not later than the later of:

(A) the 10th school day of the fall semester; or

(B) the 45th school business day, or the first school day after the 45th school business day if that day is not a school day, after the date the request is made.

(m) A school district, parent, staff member, or administrator may request an expedited review by the agency of the district's:

(1) denial of a request made under this section;

(2) request for an extension of time to begin operation of a video camera under Subsection (l)(3) or (5); or

(3) determination to not release a video recording to a person described by Subsection (i).

(n) If a school district, parent, staff member, or administrator requests an expedited review under Subsection (m), the agency shall notify all other interested parties of the request.

(o) If an expedited review has been requested under Subsection (m), the agency shall issue a preliminary judgment as to whether the district is likely to prevail on the issue under a full review by the agency. If the agency determines that the district is not likely to prevail, the district must fully comply with this section notwithstanding an appeal of the agency's decision. The agency shall notify the requestor and the district, if the district is not the requestor, of the agency's determination.

(p) The commissioner:

(1) shall adopt rules relating to the expedited review process under Subsections (m), (n), and (o), including standards for making a determination under Subsection (o); and

(2) may adopt rules relating to an expedited review process under Subsections (m), (n), and (o) for an open-enrollment charter school.

(q) The agency shall collect data relating to requests made under this section and actions taken by a school district or open-enrollment charter school in response to a request, including the number of requests made, authorized, and denied.

(r) A video recording under this section is a governmental record only for purposes of Section 37.10, Penal Code.

(s) This section applies to the placement, operation, and maintenance of a video camera in a self-contained classroom or other special education setting during the regular school year and extended school year services.

(t) A video camera placed under this section is not required to be in operation for the time during which students are not present in the classroom or other special education setting.

(u) In this section:

(1) "Parent" includes a guardian or other person standing in parental relation to a student.

(2) "School business day" means a day that campus or school district administrative offices are open.

(3) "Self-contained classroom" does not include a classroom that is a resource room instructional arrangement under Section 42.151.

(4) "Staff member" means a teacher, related service provider, paraprofessional, counselor, or educational aide assigned to work in a self-contained classroom or other special education setting.

(5) "Time-out" has the meaning assigned by Section 37.0021.

Amended by: Acts 2017, 85th Leg., R.S., Ch. 751 (S.B. 1398), Sec. 1, eff. June 12, 2017.

TAC §103.1301. Video Surveillance of Certain Special Education Settings

(a) Requirement to implement. In order to promote student safety, on written request by a parent, school district board of trustees, governing body of an open-enrollment charter school, principal, assistant principal, or staff member, as authorized by Texas Education Code (TEC) §29.022(a-1), a school district or an open-enrollment charter school must provide video equipment to campuses in accordance with TEC, §29.022, and this section. Campuses that receive video equipment must place, operate, and maintain video cameras in self-contained classrooms or other special education settings in accordance with TEC, §29.022, and this section.

(b) Definitions. For purposes of TEC, §29.022, and this subchapter, the following terms have the following meanings.

(1) Parent means a person described in TEC, §26.002, whose child receives special education and related services in one or more self-contained classrooms or other special education settings. Parent also means a student who receives special education and related services in one or more self-contained classrooms or other special education settings and who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Texas Family Code, Chapter 31, unless the student has been determined to be incompetent or the student's rights have been otherwise restricted by a court order.

(2) Staff member means a teacher, a related service provider, a paraprofessional, a counselor, or an educational aide assigned to work in a self-contained classroom or other special education setting.

(3) Open-enrollment charter school means a charter granted to a charter holder under TEC, §12.101 or §12.152, identified with its own county district number.

(4) Self-contained classroom means a classroom on a regular school campus (i.e., a campus that serves students in general education and students in special education) of a school district or an open-enrollment charter school, including a room attached to the classroom used for time-out, but not including a classroom that is a resource room instructional arrangement under TEC, §42.151, in which a majority of the students in regular attendance are provided special education and related services for at least 50 percent of the instructional day and have one of the following instructional arrangements/settings described in the student attendance accounting handbook adopted under §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook):

(A) self-contained (mild/moderate/severe) regular campus;

(B) full-time early childhood (preschool program for children with disabilities) special education setting;

(C) residential care and treatment facility - self-contained (mild/moderate/severe) regular campus;

(D) residential care and treatment facility - full-time early childhood special education setting;

(E) off home campus - self-contained (mild/moderate/severe) regular campus; or

(F) off home campus - full-time early childhood special education setting.

(5) Other special education setting means a classroom on a separate campus (i.e., a campus that serves only students who receive special education and related services) of a school district or open-enrollment charter school, including a room attached to the classroom or setting used for time-out, in which a majority of the students in regular attendance are provided special education and related services, are assigned to the setting for at least 50 percent of the instructional day, and have one of the following instructional

arrangements/settings described in the student attendance accounting handbook adopted under §129.1025 of this title:

(A) residential care and treatment facility - separate campus; or

(B) off home campus - separate campus.

(6) Video camera means a video surveillance camera with audio recording capabilities.

(7) Video equipment means one or more video cameras and any technology and equipment needed to place, operate, and maintain video cameras as required by TEC, §29.022, and this section. Video equipment also means any technology and equipment needed to store and access video recordings as required by TEC, §29.022, and this section.

(8) Incident means an event or circumstance that:

(A) involves alleged "abuse" or "neglect," as those terms are described in Texas Family Code, §261.001, of a student by a staff member ~~an employee~~ of the school district or charter school or alleged "physical abuse" or "sexual abuse," as those terms are described in Texas Family Code, §261.001, of a student by another student; and

(B) allegedly occurred in a self-contained classroom or other special education setting in which video surveillance under TEC, §29.022, and this section is conducted.

(9) School business day means a day that campus, school district, or open-enrollment charter school administrative offices are open.

(10) Time-out has the meaning assigned by TEC, §37.0021.

(c) Exclusions. A school district or open-enrollment charter school is not required to provide video equipment to a campus of another district or charter school or to a nonpublic school. In addition, the Texas School for the Deaf, the Texas School for the Blind and Visually Impaired, the Texas Juvenile Justice Department, and any other state agency that provides special education and related services to students are not subject to the requirements in TEC, §29.022, and this section.

(d) Use of funds. A school district or open-enrollment charter school may solicit and accept gifts, grants, and donations from any person to implement the requirements in TEC, §29.022, and this section. A district or charter school is not permitted to use Invididuals with Disabilities Education Act, Part B, funds or state special education funds to implement the requirements of TEC, §29.022, and this section.

(e) Dispute resolution. The special education dispute resolution procedures in 34 Code of Federal Regulations, §§300.151-300.153 and 300.504-300.515, do not apply to complaints alleging that a school district or open-enrollment charter school has failed to comply with TEC, §29.022, and/or this section. Complaints alleging violations of TEC, §29.022, and/or this section must be addressed through the district's or charter school's local grievance procedures or other dispute resolution channels.

(f) Regular school year and extended school year services. TEC, §29.022, and this section apply to video surveillance during the regular school year and during extended school year services.

(g) Policies and procedures. Each school district board of trustees and open-enrollment charter school governing body must adopt written policies relating to the placement, operation, and maintenance of video cameras under TEC, §29.022, and this section. At a minimum, the policies must include:

(1) a statement that video surveillance is for the purpose of promoting student safety in certain self-contained classrooms and other special education settings;

(2) information on how a person may appeal an action by the school district or open-enrollment charter school that the person believes to be in violation of this section or a policy adopted in accordance with this section, including the appeal and expedited review processes under §103.1303 of this title (relating to Commissioner's Review of Actions Concerning Video Cameras in Special Education Settings) and the appeals process under TEC, §7.057;

(3) a requirement that the school district or open-enrollment charter school provide a response to a request made under this section not later than the seventh school business day after receipt of the request by the person to whom it must be submitted under TEC, §29.022(a-3), that authorizes the request or states the reason for denying the request;

(4) except as provided by paragraph (6) of this subsection, a requirement that a school or campus begin operation of a video camera in compliance with this section not later than the 45th school business day, or the first school day after the 45th school business day if that day is not a school day, after the request is authorized unless the Texas Education Agency (TEA) grants an extension of time;

(5) a provision permitting the parent of a student whose admission, review, and dismissal committee has determined that the student's placement for the following school year will be in a classroom or other special education setting in which a video camera may be placed under this section to make a request for the video camera by the later of:

(A) the date on which the current school year ends; or

(B) the 10th school business day after the date of the placement determination by the admission, review, and dismissal committee;

(6) a requirement that, if a request is made by a parent in compliance with paragraph (5) of this subsection, unless the TEA grants an extension of time, a school or campus begin operation of a video camera in compliance with this section not later than the later of:

(A) the 10th school day of the fall semester; or

(B) the 45th school business day, or the first school day after the 45th school business day if that day is not a school day, after the date the request is made;

(7) the procedures for requesting video surveillance and the procedures for responding to a request for video surveillance;

(8) the procedures for providing advanced written notice to the campus staff and the parents of the students assigned to a self-contained classroom or other special education setting that video and audio surveillance will be conducted or cease in the classroom or setting, including procedures for notice, in compliance with TEC, §29.022(b), of the opportunity to request continued video and audio surveillance if video and audio surveillance will otherwise cease;

(9) a requirement that video cameras be operated at all times during the instructional day when one or more students are present in a self-contained classroom or other special education setting in which video cameras are placed;

(10) a statement regarding the personnel who will have access to video equipment or video recordings for purposes of operating and maintaining the equipment or recordings;

(11) a requirement that a campus continue to operate and maintain any video camera placed in a self-contained classroom or other special education setting for as long as the classroom or setting continues to satisfy the requirements in TEC, §29.022(a), for the remainder of the school year in which the school or campus received the request, unless the requestor withdraws the request in writing;

(12) a requirement that video cameras placed in a self-contained classroom or other special education setting be capable of recording video and audio of all areas of the classroom or setting, except that no visual monitoring of bathrooms and areas in which a student's clothes are changed may occur. Incidental visual coverage of the inside of a bathroom or any area of the classroom or other special education setting in which a student's clothes are changed is permitted only to the extent that such coverage is the result of the layout of the classroom or setting. Audio recording of the inside of a bathroom or any area of the classroom or other special education setting in which a student's clothes are changed is required;

(13) a statement that video recordings must be retained for at least three months after the date the video was recorded and that video recordings will be maintained in accordance with the requirements of TEC, §29.022(e-1), when applicable;

(14) a statement that the regular or continual monitoring of video is prohibited and that video recordings must not be used for teacher evaluation or monitoring or for any purpose other than the promotion of student safety;

(15) at the school district's or open-enrollment charter school's discretion, a requirement that campuses post a notice at the entrance of any self-contained classroom or other special education setting in which video cameras are placed stating that video and audio surveillance are conducted in the classroom or setting;

(16) the procedures for reporting an allegation to the school district, charter school, or school that an incident occurred in a self-contained classroom or other special education setting in which video surveillance under TEC, §29.022, and this section is conducted;

(17) the local grievance procedures for filing a complaint alleging violations of TEC, §29.022, and/or this section; and

(18) a statement that video recordings made under TEC, §29.022, and this section are confidential and a description of the limited circumstances under which the recordings may be viewed.

(h) Confidentiality of video recordings. A video recording made under TEC, §29.022, and this section is confidential and may only be released and/or viewed by the following individuals, to the extent permitted or required by TEC, §29.022(i), and to the extent not limited by the Family Educational Rights and Privacy Act of 1974 (FERPA) or other law:

(1) a staff member or a parent of a student involved in an incident described in subsection (b)(8) of this section that is documented by a video recording for which an incident has been reported to the district, charter school, or school;

(2) appropriate Texas Department of Family and Protective Services personnel as part of an investigation under Texas Family Code, §261.406;

(3) a peace officer, school nurse, or administrator of a school district, charter school, or school trained in de-escalation and restraint techniques as provided by commissioner rule, or a human resources staff member

designated by the school district's board of trustees or open-enrollment charter school's governing body in response to a report or an investigation of an incident described in subsection (b)(8) of this section; or

(4) appropriate TEA or State Board for Educator Certification personnel or agents as part of an investigation.

(i) Exception to restrictions on viewing. A contractor or employee performing job duties relating to the installation, operation, or maintenance of video equipment or the retention of video recordings who incidentally views a video recording does not violate subsection (h) of this section.

(j) Child abuse and neglect reporting. If a person described in subsection (h)(3) or (4) of this section views a video recording and has cause to believe that the recording documents possible abuse or neglect of a child under Texas Family Code, Chapter 261, the person must submit a report to the Texas Department of Family and Protective Services or other authority in accordance with the local policy adopted under §61.1051 of this title (relating to Reporting Child Abuse and Neglect) and Texas Family Code, Chapter 261.

(k) Disciplinary actions and legal proceedings. If a person described in subsection (h)(2), (3), or (4) of this section views a video recording and believes that it documents a possible violation of school district, open-enrollment charter school, or campus policy, the person may allow access to the recording to appropriate legal and human resources personnel of the district or charter school to the extent not limited by FERPA or other law. A recording believed to document a possible violation of school district, open-enrollment charter school, or campus policy relating to the neglect or abuse of a student may be used in a disciplinary action against district or charter school personnel and must be released in a legal proceeding at the request of a parent of the student involved in the incident documented by the recording. A recording believed to document a possible violation of school district, open-enrollment charter school, or campus policy relating to the neglect or abuse of a student must be released for viewing by the district or charter school employee who is the subject of the disciplinary action at the request of the employee.

(l) Access rights. Subsections (j) and (k) of this section do not limit the access of a student's parent to an educational record of the student under FERPA or other law. To the extent any provisions in TEC, §29.022, and this section conflict with FERPA or other federal law, federal law prevails.

All State Rules will be followed in implementing the Video Camera Surveillance Requirements to promote student safety.

I. Local Awareness/Training of Video Camera Rules

A. Administration

1. The Special Education Director will schedule a meeting/training with Administration, Principals and Technology Director to provide a copy of the rules and guidelines.

2. The district will designate an administrator at the primary administrative office with responsibility for coordinating the provision of equipment to schools and campuses in compliance with TEC §29.022.

3. Opportunity is provided for input to local Operating Guidelines Online (OGO).

4. TASB is providing district with Policy Statements found in EHBAF (Legal) and the Legal Framework will provide the Procedures listed in §103.1301(g) Video Surveillance of Certain Special Education Settings.

5. The Administration is aware that special education state and federal dollars may not be spent on this activity.

B. Staff. The Special Education Director or campus principal will inform appropriate staff of the new video surveillance rules and their responsibility to immediately notify the local campus principal or designee regarding any request.

II. Designated Administrator at the Primary Administrative Office (based on §29.002)

A. Person will be familiar with the rules and regulations

B. Person will ensure and document the newest rules and regulations are followed including (but not limited to):

1. who may make the request

2. student/classroom eligible for the request

3. request must be in writing

4. new timelines for each stage in the process

5. district response

6. written notice, procedural requirement and timelines

7. coordination with the parents, principal, staff, special education department, technology department, business office

8. request to view taping, and

9. handle appeals as necessary

III. The Designated Administrator at the Primary Administrative Office (based on §29.002) will be the contact person with the school attorney should any question arise in following the requirements.

§103.1303. Commissioner's Review of Actions Concerning Video Cameras in Special Education Settings.

(a) Applicability. This section shall apply to all hearings and reviews of actions taken under Texas Education Code (TEC), §29.022, concerning denials of requests for the installation of cameras, denials of requests to view a video, denials of requests to release a video, and requests of a school district for an extension of time for the installation of cameras. This section applies to constructive denials of requests, which occur when a school district fails to timely issue a denial of a request. To the extent that this section conflicts with any other sections governing hearings before the commissioner of education, including Chapter 157, Subchapter AA of this title (relating to General Provisions for Hearings Before the Commissioner of Education) and Subchapter BB of this title (relating to Specific Appeals to the Commissioner), this section shall prevail.

(b) Denial of request. The following standards and procedures apply to a denial of a request made under TEC, §29.022(a), for the placement of a video camera or to the denial of a request to release a video or to view a video made under TEC, §29.022(i) or (l)(2).

(1) Once a request for placement of a video camera or a request to release a video is administratively denied, the requestor must exhaust administrative remedies through the school district's grievance process even if the requestor opts for the expedited review process. However, a school district, parent, staff member, or administrator may request an expedited review even before local remedies are exhausted.

(2) After local remedies are exhausted by filing a grievance with the school board and obtaining a school board determination, the requestor may appeal the denial to the commissioner of education under TEC, §7.057, by filing a petition for review.

(3) In a case where there is a denial of a request for the placement of a video camera, the commissioner will determine whether the person requesting placement is a person allowed to request placement under TEC, §29.022(a-1), and whether the requestor made a proper request under TEC, §29.022(a-3)

(4) The commissioner will not consider the cost to the district of installing cameras or releasing a video.

(5) In a case where there is a denial of a request to release a video, the commissioner will determine whether the requestor is a person allowed to receive a video under TEC, §29.022(i). The commissioner may make an in-camera inspection of the video in question in the appropriate case.

(6) The following timelines are established for filing a petition for review.

(A) A petition for review shall be filed with the commissioner within 10 calendar days of the decision of the board of trustees denying the request being first communicated to the requestor or requestor's counsel, whichever occurs first. The petition for review shall be made in accordance with §157.1073(c) of this title (Relating to Hearings Brought Under Texas Education Code, §7.057) and may include a request for expedited review.

(B) The district's answer and local record shall comply with §157.1052(b) and (c) of this title (relating to Answers) and §157.1073(d) of this title and shall be filed with the commissioner within 10 calendar days of the school district receiving notification from the commissioner of the appeal.

(C) The procedures specified in §§157.1059; 157.1061; and 157.1073(e)-(h), (j), and (k) of this title apply to a case brought to the commissioner under this section.

(7) A request for expedited review is governed by the following.

(A) The expedited review process is designed to allow a requestor to promptly receive a preliminary judgment from the commissioner as to a decision to deny a request for the installation of cameras or a decision to deny a request to release a video while at the same time respecting the school grievance process. The expedited review process does not apply to a request to only view a video. Invoking the expedited review process results in a prompt initial determination. However, the final commissioner's determination is to be based on a substantial evidence review of the school district's grievance record. This allows for a full record to be developed at the school district level and does not require the requestor and the school district to make an evidentiary record before the Texas Education Agency (TEA) in Austin, Texas. Because the requirements of TEC, §7.057, are met when the school board's decision is heard by the commissioner, an appeal to district court is allowed under TEC, §7.057(d). TEC, §29.022, does not by itself allow an appeal to district court.

(B) A school district, parent, staff member, or administrator may request an expedited review. Any request for an expedited review shall include the names, telephone numbers, and addresses of all interested parties to the request. "Interested parties" are all persons who brought the grievance, all persons who have testified or provided written statements as part of the grievance process, and the school district. The request for expedited review shall specify whether the school district denied a request for the placement of a video camera or the school district denied a request to release a video and briefly describe why that decision is either correct or incorrect.

(C) A request for expedited review shall be filed with the commissioner no earlier than 14 business days after a request for placement of a video camera or a request to release a video is administratively denied under TEC, §29.022(i) or (l)(2), and no later than the fifth business day after a school board resolves a grievance as to a request for placement of a video camera or a request to release a video. A request for expedited review shall be filed with the commissioner by U.S. mail, facsimile, hand delivery, or by a commercial delivery service.

(D) Whenever an interested party files a document with the commissioner, with the exception of the request for expedited review, the interested party shall send the same document to all other interested parties by the same method that the document was sent to the commissioner. Hand-delivery of the document by the next day may be substituted for service by facsimile delivery.

(E) If a request for expedited review is timely filed, the commissioner will establish a briefing schedule and will send to all interested parties a notice that an expedited review has been filed, which will include relevant statutes and rules. Any interested party who knows of any additional interested parties who have not been notified will promptly inform the commissioner in writing.

(F) All briefing shall clearly state the facts relied upon. Documents relevant to the issues presented may be attached to a brief. All briefing shall provide the reasons why the commissioner should or should not grant the request for expedited review. Citations to statutes, rules, commissioner decisions, and caselaw are important to identify the legal basis for the claims made.

(G) All interested parties who are in favor of granting the request for expedited review shall file briefing at the time specified for the requestor of the expedited review.

(H) All interested parties who are opposed to granting the request for expedited review shall file briefing at the same time.

(I) Briefing is not limited to the issues specifically raised in the pleadings in the case. However, no new arguments may be raised in the reply briefs. Reply briefs may contain new citations to the record and legal authority as to issues previously raised.

(J) A preliminary judgment shall be issued based on the briefing of the interested parties. The preliminary judgment will be sent to the requestor, the school district, and all interested parties. If it is determined that a school district is not likely to prevail on the issue of a request for the placement of video cameras or the issue of a request to view a video under full review, the school district will fully comply with TEC, §29.022.

(K) After a preliminary judgment is made, a final judgment will be made in accordance with the procedures set forth in paragraphs (1)-(5) of this subsection.

(c) Extension of time. A request by a school district for an extension of time to begin the operation of a video camera under TEC, §29.022, shall be made and decided using the following procedures.

(1) Any request by a school district for an extension of time to begin the operation of a video camera shall be filed with the commissioner prior to the 45th school business day after a request to begin operating a video camera is received. However, a school district should request an extension of time as soon as it determines that an extension of time should be filed.

(2) A request for an extension of time to begin the operation of a video camera shall specify why an extension of time should be granted. The request shall include affidavits supporting any factual claims made in the request and reference any legal authority as to why the request should be granted. The request may include a request for expedited review. The request shall name the individual who requested the installation of cameras and provide the individual's address and telephone number. Immediately following the individual's address and telephone number there shall appear in bold type: "You have been identified as the individual who requested the operation of a video camera that is the subject of this request to the commissioner of education to extend the statutory timeline. You may, but are not required to, participate in the proceedings before the commissioner concerning the school district's request for an extension of time. It is entirely up to you whether and to what extent you wish to participate in these proceedings. The procedures governing these proceedings are found at 19 Texas Administrative Code §103.1303(c) and Texas Education Code, §29.022."

(3) A request for an extension of time to begin the operation of a video camera shall list the names, telephone numbers, and addresses of all interested parties to the request. All interested parties include all parents of students in the classroom or other special education setting for which a video camera has been requested and all staff who provided services in a classroom for which a video camera has been requested.

(4) All documents in a case shall be filed with the Division of Hearings and Appeals, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, facsimile number (512) 475-3662. Documents can be filed by mail, delivery, or facsimile. All documents must be actually received by the Division of Hearings and Appeals by the date specified in this section. The mailbox rule does not apply to filings in a case filed under this subsection. Filing by facsimile is strongly encouraged.

(5) All filings in a case shall be sent to the school district, the individual who initially requested the installation of the cameras, and all interested parties who have filed a request to receive documents filed in the case by the same method as the request is filed with the commissioner. Due to the requirements of the Family Educational Rights and Privacy Act of 1974, the names, telephone numbers, and addresses of parents and other publicly identifiable student information may not be given to the interested parties. The copies of the filings sent to interested parties shall be redacted to remove all personally identifiable student information.

(6) Any response to a request for an extension of time to begin the operation of a video camera shall be filed with the commissioner by an interested party within 10 calendar days of the filing of the request. If no response to the request is timely filed, the commissioner shall issue a final decision within 20 calendar days of the filing of the request.

(7) A response to a request for an extension of time to begin the operation of a video camera shall specify why an extension of time should or should not be granted. The response shall include affidavits concerning any factual claims made in the request and reference any legal authority as to why the request should or should not be granted. The response may include a request for expedited review.

(8) A request for expedited review must be filed with the commissioner within 10 calendar days of the filing of the request for an extension of time to begin the operation of a video camera. If a request for expedited review is made, all interested parties shall be notified that they have been identified as interested parties in the request for an extension of time to begin the operation of a video camera. In particular, the interested parties will be informed that it is their choice whether to participate in the proceedings before the commissioner, that it is entirely up to them to determine to what extent they wish to participate in the proceedings, that the procedures governing these proceedings are found in this subsection and TEC, §29.022, and that upon their written request filed with the commissioner they will be sent all filings in this case.

(9) If a request for an expedited review is not made, the commissioner shall issue a final decision within 45 calendar days of the filing of the request for an extension of time to begin the operation of a video camera, unless the commissioner determines that an evidentiary hearing would be helpful in deciding the issues raised. If the commissioner decides to hold an evidentiary hearing, the commissioner shall establish the timelines and procedures to be used. Whether to conduct the hearing by telephone or other electronic methods will be considered.

(10) If a request for expedited review is made, the following procedures shall be followed.

(A) Any reply by the school district to any response to the request shall be filed with the commissioner within 25 calendar days of the filing of the request for an extension of time to begin the operation of a video camera.

(B) A preliminary judgment shall be made by the commissioner within 35 calendar days of the filing of the request for an extension of time to begin the operation of a video camera.

(C) Any interested party or the school district may file objections to the preliminary judgment within 40 calendar days of the filing of the request for an extension of time to begin the operation of a video camera.

(D) Any reply to an objection to a preliminary judgment must be filed within 45 calendar days of the filing of a request for an extension of time to begin the operation of a video camera.

(E) The commissioner shall issue a final decision within 55 calendar days of the filing of the request for an extension of time to begin the operation of a video camera, unless the commissioner determines that an evidentiary hearing would be helpful in deciding the issues raised. If the commissioner decides to hold an evidentiary hearing, the commissioner shall establish the timelines and procedures to be used. Whether to conduct the hearing by telephone or other electronic methods will be considered.

(11) In making either a preliminary judgment or a final judgment under this subsection, the commissioner will consider whether granting the requested extension is reasonable considering all factors, including

contracting statutes, architectural and structural issues, and the difference in costs to the district if a moderate extension of time is granted.

(12) A commissioner's final decision under this subsection is not subject to appeal.

TEC §48.265 [42.2528]. EXCESS FUNDS FOR VIDEO SURVEILLANCE OF SPECIAL EDUCATION SETTINGS.

See Section 8. under State Funding

Consent for Individual Family Support Plan (IFSP) – §300.323(b)(2)(ii)

§300.323 When IEPs must be in effect.

(b) IEP or IFSP for children aged three through five.

(1) In the case of a child with a disability aged three through five (or, at the discretion of the SEA, a two-year-old child with a disability who will turn age three during the school year), the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is--

(i) Consistent with State policy; and

(ii) Agreed to by the agency and the child's parents.

(2) In implementing the requirements of paragraph (b)(1) of this section, the WCSESSA must--

(i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and

(ii) If the parents choose an IFSP, obtain written informed consent from the parents.

§300.323 When IEPs must be in effect.

(e) If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either---

(1) Adopts the child's IEP from the previous public agency; or

(2) Develops, adopts, and implements a new IEP that meets the applicable requirements in §§300.320 through 300.324.

IV. PARENT PARTICIPATION IN MEETINGS *(also in section 4-ARD/IEP)*

§300.30 Parent.

(a) Parent means--

(1) A biological or adoptive parent of a child;

(2) A foster parent, unless State law, regulations or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;

(3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);

(4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or

(5) A surrogate parent who has been appointed in accordance with §300.519 or section 639(a)(5) of the Act.

(b) (1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(2) If a judicial decree or order identifies a specific person or persons under paragraph (a)(1) through (4) of this section to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this section, except that a public agency that provides education or care for the child may not act as the parent.

TEC § 26.002. Definition.

In this chapter, "parent" includes a person standing in parental relation. The term does not include a person as to whom the parent-child relationship has been terminated or a person not entitled to possession of or access to a child under a court order. Except as provided by federal law, all rights of a parent under Title 2 of this code and all educational rights under Section 151.003(a)(10), Family Code, shall be exercised by a student who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Chapter 31, Family Code, unless the student has been determined to be incompetent or the student's rights have been otherwise restricted by a court order.

TEC § 29.052. Definitions. [Excerpt]

In this subchapter:

(2) "Parent" includes a legal guardian of a student.

§300.45 Ward of the State.

(a) General. Subject to paragraph (b) of this section, ward of the State means a child who, as determined by the State where the child resides, is--

(1) A foster child;

(2) A ward of the State; or

(3) In the custody of a public child welfare agency.

(b) Exception. Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in §300.30.

§300.322 Parent Participation.

(a) Public agency responsibility—general . The Wood County SSA must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including--

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b) Information provided to parents.

(1) The notice required under paragraph (a)(1) of this section must--
(i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and
(ii) Inform the parents of the provisions in §300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and §300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).
(2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must--
(i) Indicate--
(A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with §300.320(b); and
(B) That the agency will invite the student; and
(ii) Identifies any other agency that will be invited to send a representative.

(c) Other methods to ensure parent participation . If neither parent can attend an IEP Team meeting, the WCSESSA must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with §300.328 (related to alternative means of meeting participation).

(d) Conducting an IEP meeting without a parent in attendance . A meeting may be conducted without a parent in attendance if the WCSESSA is unable to convince the parents that they should attend. In this case, the WCSESSA must keep a record of its attempts to arrange a mutually agreed on time and place such as:
(1) Detailed records of telephone calls made or attempted and the results of those calls;
(2) Copies of correspondence sent to the parents and any responses received; and
(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) Use of interpreters or other action, as appropriate. The WCSESSA must take whatever ction is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(f) Parent copy of child's IEP . The WCSESSA must give the parent a copy of the child's IEP at no cost to the parent. (Authority: 20 U.S.C. 1414(d)(1)(B)(i))

§300.501 Parent participation in meetings.

(a) Opportunity to examine records. The parents of a child with a disability must be afforded, in accordance with the procedures of §§300.613 through 300.621, an opportunity to inspect and review all education records with respect to--
(1) The identification, evaluation, and educational placement of the child; and
(2) The provision of FAPE to the child.

(b) Parent participation in meetings.
(1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to--
(i) The identification, evaluation, and educational placement of the child; and
(ii) The provision of FAPE to the child.
(2) The WCSESSA must provide notice consistent with §300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section.
(3) A meeting does not include informal or unscheduled conversations involving WCSESSA personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that WCSESSA personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(c) Parent involvement in placement decisions.
(1) The WCSESSA must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.
(2) In implementing the requirements of paragraph (c)(1) of this section, the WCSESSA must use procedures consistent with the procedures described in §300.322(a) through (b)(1).
(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the WCSESSA must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(4) A placement decision may be made by a group without the involvement of a parent, if the WCSESSA is unable to obtain the parent's participation in the decision. In this case, the WCSESSA must have a record of its attempt to ensure their involvement.
(Authority: 20 U.S.C. 1414(e), 1415(b)(1))

3 Prior Notice Attempts to ensure parent participation in the IEP meeting.
The WCSESSA will make advance attempts to notify parents of ARD/IEP meetings and arrange a mutually agreeable time and location.

1. *The first Prior Written Notice of the ARD/IEP meeting form is provided in writing 2 weeks (10 working days) prior to the scheduled ARD/IEP date. This early notice will allow more time to contact the parent and then proceed at the first scheduled date and time. The Notice form includes options to agree to the proposed date, change the date, hold the meeting on the phone or suggest the district proceed without the parent in attendance. A copy of the completed Notice form sent to the parent is maintained in the student eligibility file as documentation.*
2. *The second attempt to notify the parents of the ARD will also be in writing (if there is no response from the parent after the first notice). The WCSESSA will copy the first notice form and send it as the second Notice of ARD/IEP meeting.*
3. *The third Notice contact will be attempted to get parental participation if there is no response from the first two attempts. After 3 attempts and no response, the WCSESSA may go forward with the ARD meeting as scheduled.*

The first attempt MUST be in written form however the staff may call and discuss the proposed date with parents in order to pick a reasonable date for both parties for the written Notice. The second Notice will also be in written form using a copy of the first Notice sent and the third Notice may be a follow-up phone call to home and work. All dates of scheduling attempts and the initials of personnel attempting contact must be documented on the district Notice form and filed in the student eligibility folder.

Mandatory Medications

§300.174 Prohibition on mandatory medication.
(a) General. The SEA must prohibit State and WCSESSA personnel from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for a child as a condition of attending school, receiving an evaluation under §§300.300 through 300.311, or receiving services under this part.
(b) Rule of construction. Nothing in paragraph (a) of this section shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under §300.111 (related to child find). (Authority: 20 U.S.C. 1412(a)(25))

TAC §89.1049. Parental Rights Regarding Adult Students. *See ARD/IEP Section 4*
TEC §29.017. Transfer of Parental Rights at Age of Majority *See ARD/IEP Section 4*
Parent Classroom Observations. A parent may be allowed to observe their student in a classroom setting according to the WCSESSA approved School Board Policy. Priority is given to an undisturbed learning environment for all students in the classroom, therefore a designated date/time/duration will be prearranged with the campus principal. Specific details of the classroom observation will be discussed in advance with the campus principal. The campus principal may contact the special education director as deemed necessary.

V. CONFIDENTIALITY OF STUDENT INFORMATION

§300.610 Confidentiality.
The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by SEAs and LEAs pursuant to Part B of the Act, and consistent with §§300.611 through 300.627. (Authority: 20 U.S.C. 1417(c))

§300.611 Definitions.
As used in §§300.611 through 300.625--
(a) Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
(b) Education records means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)). *FERPA in its entirety: http://www2.ed.gov/policy/gen/reg/ferpa/index.html*
(c) Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act.

§300.32 Personally identifiable. Personally identifiable means information that contains--
(a) The name of the child, the child's parent, or other family member;
(b) The address of the child;
(c) A personal identifier, such as the child's social security number or student number; or
(d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty. *See FERPA in its entirety for definition of directory information if needed: http://www2.ed.gov/policy/gen/reg/ferpa/index.html*

TAC §26.013. Student Directory Information. (excerpt)
(a) The Wood County SSA shall provide to the parent of each district student at the beginning of each school year or on enrollment of the student after the beginning of a school year:
(1) a written explanation of the provisions of the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), regarding the release of directory information about the student; and
(2) written notice of the right of the parent to object to the release of directory information about the student under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).
(b) The notice required by Subsection (a)(2) must contain:
(1) the following statement in boldface type that is 14- point or larger: "Certain information about district students is considered directory information and will be released to anyone who follows the procedures for requesting the information unless the parent or guardian objects to the release of the directory information about the student. If you do not want [insert name of school district] to disclose directory information from your child's education records without your prior written consent, you must notify the district in writing by [insert date]. [Insert name of school district] has designated the following information as directory information: [Here a school district must include any directory information it chooses to designate as directory information for the district, such as a student's name, address, telephone listing, electronic mail address, photograph, degrees, honors and awards received, date and place of birth, major field of study, dates of attendance, grade level, most recent educational institution attended, and participation in officially recognized activities and sports, and the weight and height of members of athletic teams.]";

§300.612 Notice to parents.
(a) The SEA must give notice that is adequate to fully inform parents about the requirements of §300.123, including--
(1) A description of the extent that the notice is given in the native languages of the various population groups in the State;
(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

(3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(4) A description of all of the rights of parents and children regarding this information, including the rights under FERPA (Family Education Rights and Privacy Act) and implementing regulations in 34 CFR part 99.

(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

The WCSESSA will distribute a current copy of the Notice of Procedural Safeguards.
http://framework.esc18.net/display/Webforms/LandingPage.aspx

§300.613 Access rights.

(a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to §300.507 or §§300.530 through 300.532, or resolution session pursuant to §300.510, and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under this section includes--

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

§300.614 Record of access.

Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

1. WCSESSA will maintain a record, kept with the eligibility file of each student, that indicates all individuals, agencies or organizations that have requested or obtained access to a student's educational records collected, maintained or used under IDEA-Part B (except access by parents and authorized employees of the WCSESSA).
The records shall include:
a. at least the name of the person or agency that made the request,
b. the date access was given, and
c. the purpose for which the person or agency is authorized to use the records.
**If parts of the student eligibility folder are maintained in classrooms, access records are required if the folder contains information such as an ARD/IEP report, modification sheet(s), or any assessment reports.*

2. The record of access will be maintained as long as WCSESSA maintains the student's education record. The record of access shall be available only to parents, school officials responsible for custody of the records, and those state and federal officials authorized to audit the operation of the system.

3. Access Procedures: The cumulative record and special education legal folder shall be made available to the parent. Records may be reviewed during regular school hours upon request to the appropriate record custodian. The record custodian or designee shall be present to explain the record and to answer questions. The confidential nature of the student's records shall be maintained at all times, and the records shall be restricted to use only in the offices of the Superintendent, a principal, a counselor, or Special Education as designated by the appropriate record custodian. The original copy of the record or any document contained in the cumulative record shall not be removed from the school or the Special Education office.

§300.615 Records on more than one child.

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific

information. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.616 List of types and locations of information.
Each participating agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the WCSESSA. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.617 Fees.
(a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.
(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

TAC § 26.012. Fee for Copies.
The agency or a school district may charge a reasonable fee in accordance with Subchapter F, Chapter 552, Government Code, for copies of materials provided to a parent under this chapter.

No fee may be charged to search for or to retrieve the education record of a student. A fee of $0.10 (10¢) per page may be charged for copies of education records that are made for the parents or students under this procedure, provided that the fee does not effectively prevent them from exercising their right to inspect and review those records. A waiver of fee should be requested in writing. No fee will be charged to search for or to retrieve information.

§300.618 Amendment of records at parent's request.
(a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.
(b) The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.
(c) If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under §300.619.

§300.619 Opportunity for a hearing.
The agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.620 Result of hearing.
(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing.
(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the parent's right to place in the records the WCSESSA maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.
(c) Any explanation placed in the records of the child under this section must--
(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and
(2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.621 Hearing procedures.
A hearing held under §300.619 must be conducted according to the procedures under 34 CFR 99.22.
(FERPA) *http://www2.ed.gov/policy/gen/reg/ferpa/index.html*

§300.622 Consent.
(a) Parental consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies collecting or using the information under this part, subject

to paragraph (b)(1) of this section unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR part 99.

(b)(1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part. *For agency planning purposes, informed consent is required each time the outside agency is invited to attend an IEP meeting. In addition, informed consent is required each time an outside agency representative meets with students to present orientation and service eligibility information – if personally identifiable information is being released to officials of the agency. Directory information is not considered personally identifiable.*

(2) Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying the transition services in accordance with 300.321(b)(3).

(3) If a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and officials in the LEA of the parent's residence.

§300.535 Referral to and action by law enforcement and judicial authorities.

(a) Rule of construction. Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(b) Transmittal of records.

(1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

(2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

§300.623 Safeguards.

(a) Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.

Custodian of Records: Unless otherwise specified in board policy, the principal is custodian of all records for currently enrolled students at the assigned school. The superintendent is the custodian of records for students who have withdrawn or graduated. The special education director is custodian of all special education records.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §300.123 and 34 CFR part 99.

Campus Principal will annually train all new and returning campus staff on personally identifiable information. As new staff are employed throughout the school year, the training will be provided. The special education director is responsible for training all central office special education staff. Documentation of the date and persons attending training will be maintained by the campus principal and the special education director.

(d) Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

Each local campus will have a listing of all personnel trained in confidentiality of student records and those who have access to the student records.

§300.624 Destruction of information.

(a) The WCSESSA must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

13 TAC 7.125(a)(4) Retention schedule for records of Texas public school districts.
Part 3: Records of Special Populations and Services
Retention Note: The term "cessation of services" used in the retention periods set in sections 3-1 through 3-5 with reference to records created on students who are referred to but not subsequently enrolled in the special program described, means the date determination against enrollment is made.
Record Description: Records of each student referred to or receiving special education services, including referral, assessment, and reevaluation reports; enrollment and eligibility forms; admission, review, and dismissal (ARD) and transitional planning committee documentation; individual educational plans (IEP) and individual transitional plans (ITP); parental consent forms for testing and placement; and other records of services required under federal and state regulation.
Retention Period: Cessation of services + 5 years, but see retention note (a).
Retention Notes:

a) It is an exception to the retention period given for this record group, that the following information must be retained PERMANENTLY in some form on each student in grades 9-12 participating in a special education program: name, last known address, student ID or Social Security number, grades, classes attended, and grade level and year completed. If an academic achievement record is created for the student and maintained among those for students in the regular population, it is not necessary for special education records custodians to maintain the prescribed information beyond 5 years after the cessation of services, provided that it is contained in the Academic Achievement Record.
b) Prior to the destruction of any records in this record group, the eligible student or the parents of the student, as applicable, must be notified in accordance with federal regulation.

VI. SURROGATE / FOSTER PARENT

§300.45 Ward of the State.

(a) General. Subject to paragraph (b) of this section, ward of the State means a child who, as determined by the State where the child resides, is--

(1) A foster child;

(2) A ward of the State; or

(3) In the custody of a public child welfare agency.

(b) Exception. Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in §300.30.

(Authority: 20 U.S.C. 1401(36))

§300.519 Surrogate parents.

(a) General. The Wood County SSA must ensure that the rights of a child are protected when--

(1) No parent (as defined in §300.30) can be identified;

(2) The WCSESSA, after reasonable efforts, cannot locate a parent;

(3) The child is a ward of the State under the laws of that State; or

(4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).

(b) Duties of public agency. The duties of the WCSESSA under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method--

(1) For determining whether a child needs a surrogate parent; and

(2) For assigning a surrogate parent to the child.

(c) Wards of the State. In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.

(d) Criteria for selection of surrogate parents.

(1) The WCSESSA may select a surrogate parent in any way permitted under State law.

(2) The WCSESSA must ensure that a person selected as a surrogate parent--

(i) Is not an employee of the SEA, the WCSESSA, or any other agency that is involved in the education or care of the child;

(ii) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and

(iii) Has knowledge and skills that ensure adequate representation of the child.

(e) Non-employee requirement; compensation. A person otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

It will be up to the discretion of the Special Education Director if compensation should be made to any person acting as a surrogate.

(f) Unaccompanied homeless youth. In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogates without regard to paragraph (d)(2)(i) of this section, until a surrogate can be appointed that meets all of the requirements of paragraph (d) of this section.

(g) Surrogate parent responsibilities. The surrogate parent may represent the child in all matters relating to-

(1) The identification, evaluation, and educational placement of the child; and

(2) The provision of FAPE to the child.

(h) SEA responsibility. The SEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after WCSESSA determines that the child needs a surrogate.

(Authority: 20 U.S.C. 1415(b)(2))

Requirements of Surrogate

TEC Sec. 29.001. Statewide Plan

The agency shall also develop and implement a statewide plan with programmatic content that includes procedures designed to:

(10) ensure that an individual assigned to act as a surrogate parent for a child with a disability, as provided by 20 U.S.C. Section 1415(b) and its subsequent amendments, is required to:
(A) complete a training program that complies with minimum standards established by agency rule;
(B) visit the child and the child's school;
(C) consult with persons involved in the child's education, including teachers, caseworkers, court-appointed volunteers, guardians ad litem, attorneys ad litem, foster parents, and caretakers;
(D) review the child's educational records;
(E) attend meetings of the child's admission, review, and dismissal committee;
(F) exercise independent judgment in pursuing the child's interests; and
(G) exercise the child's due process rights under applicable state and federal law.

TAC §89.1047. Procedures for Special Education Decision-Making for Students in Foster Care.

(a) A foster parent may act as a parent of a child with a disability, in accordance with 34 Code of Federal Regulations (CFR), §300.30, relating to the definition of parent, if requirements of Texas Education Code (TEC), §29.015(a), are met, including the completion of the training program described in subsection (c)(1) of this section.
(1) For a foster parent to serve as a student's parent, a school district must ensure that the foster parent has received training described in subsection (c)(1) of this section. The foster parent must complete the training program before the student's next scheduled admission, review, and dismissal (ARD) committee meeting, but not later than the 90th day after the foster parent begins acting as the parent for the purpose of making special education decisions.
(2) The training program can be conducted or provided by 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 Individuals with Disabilities Education Act (IDEA) training to parents. Once an individual has completed the training, the individual may not be required by any school district to complete additional training in order to serve as the parent or the surrogate parent for the student or other students with disabilities who are in foster care. School districts may provide optional ongoing or supplemental training.

(b) If a school district denies a foster parent the right to serve as a parent, the school 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 must:
(1) specifically explain why the foster parent is being denied the right to serve as the student's parent; and
(2) inform the foster parent of his or her right to file a complaint with the Texas Education Agency in accordance with 34 CFR, §§300.151-300.153, relating to special education complaint procedures.

(c) Except as provided by Texas Family Code, §263.0025, which authorizes a court to appoint a surrogate parent, if a district cannot locate or identify a parent, if the foster parent is unwilling or unable to serve as a parent, or if the student does not reside in a foster home setting, the school district must assign a surrogate parent to make special education decisions on behalf of the student. An individual assigned by a school district to act as a surrogate parent for a student with a disability, in accordance with 34 CFR, §300.519, and TEC, §29.0151, relating to surrogate parents, must comply with the requirements specified in TEC, §29.001(10).
(1) Pursuant to TEC, §29.001(10)(A), a foster parent serving as a parent or an individual assigned by a school district 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:
(A) the identification of a student with a disability;
(B) the collection of evaluation and re-evaluation data relating to a student with a disability;
(C) the ARD committee process;
(D) the development of an individualized education program (IEP), including the consideration of transition services for a student who is at least 14 years of age;
(E) the determination of least restrictive environment;
(F) the implementation of an IEP;
(G) 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 the issues described in 34 CFR, §300.504(c); and
(H) where to obtain assistance in understanding the provisions of federal and state laws, rules, and regulations relating to students with disabilities.
(2) The training program described in subsection (c)(1) of this section must be provided in the native language or other mode of communication used by the individual being trained.

(3) To serve as a student's surrogate parent, a school district must ensure that the surrogate parent has received training described in subsection (c)(1) of this section. The individual assigned by a school district to act as a surrogate parent must complete the training program before the student's next scheduled ARD committee meeting but not later than the 90th day after the date of initial assignment as a surrogate parent.

(4) The training program can be conducted or provided by the TDFPS, a school district, an education service center, or any entity that receives federal funds to provide IDEA training to parents. Once an individual has completed the training, the individual may not be required by any school district to complete additional training in order to serve as the surrogate parent or the parent for the student or other students with disabilities who are in foster care. School districts may provide optional ongoing or supplemental training.

(d) Each school district or shared services arrangement must develop and implement procedures for conducting an analysis of whether a potential surrogate parent has an interest that conflicts with the interests of his or her child. 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 TDFPS.

(e) If a court appoints a surrogate parent for a child with a disability under Texas Family Code, §263.0025, and the school district determines that the surrogate parent is failing to perform or is not properly performing the duties listed under TEC, §29.0151(d), the district must consult with TDFPS and appoint another person to serve as the surrogate parent for the child.

TEC §29.015. Special Education Decision-Making For Children in Foster Care ~~Foster Parents~~.

~~(a) The WCSESSA shall give preferential consideration to a foster parent of a child with a disability when assigning a surrogate parent for the child.~~

(a) ~~(b)~~ A foster parent may act as a parent of a child with a disability, as authorized under 20 U.S.C. Section 1415(b) and its subsequent amendments, if:

(1) the Department of Family and Protective ~~[and Regulatory]~~ Services is appointed as the temporary or permanent managing conservator of the child;

(2) the rights and duties of the department to make decisions regarding education provided to the child under Section 153.371, Family Code, have not been limited by court order ~~[the child has been placed with the foster parent for at least 60 days]~~; and

(3) the foster parent agrees to:

(A) participate in making special education ~~[educational]~~ decisions on the child's behalf; and

(B) complete a training program ~~[for surrogate parents]~~ that complies with minimum standards established by agency rule

~~(4) the foster parent has no interest that conflicts with the child's interests.~~

(b) A foster parent who will act as a parent of a child with a disability as provided by Subsection (a) must complete a training program before the next scheduled admission, review, and dismissal committee meeting for the child but not later than the 90th day after the date the foster parent begins acting as the parent for the purpose of making special education decisions.

(b-1) A school district may not require a foster parent to retake a training program to continue serving as a child's parent or to serve as the surrogate parent for another child if the foster parent has completed a training program to act as a parent of a child with a disability provided by:

(1) the Department of Family and Protective Services;

(2) a school district;

(3) an education service center; or

(4) any other entity that receives federal funds to provide special education training to parents.

(c) A foster parent who is denied the right to act as a ~~[surrogate parent or a]~~ parent under this section by a school district may file a complaint with the agency in accordance with federal law and regulations.

(d) Not later than the fifth day after the date a child with a disability is enrolled in a school, the Department of Family and Protective Services must inform the appropriate school district if the child's foster parent is unwilling or unable to serve as a parent for the purposes of this subchapter.

Amended by: Acts 2017, 85th Leg., (HB 1556), Sec. 1 eff. September 1, 2017.

TEC §29.0151. APPOINTMENT OF SURROGATE PARENT FOR CERTAIN CHILDREN.

(a) This section applies to a child with a disability for whom:

(1) the Department of Family and Protective Services is appointed as the temporary or permanent managing conservator of the child; and

(2) the rights and duties of the department to make decisions regarding the child's education under Section 153.371, Family Code, have not been limited by court order.

(b) Except as provided by Section 263.0025, Family Code, a school district must appoint an individual to serve as the surrogate parent for a child if:
(1) the district is unable to identify or locate a parent for a child with a disability; or
(2) the foster parent of a child is unwilling or unable to serve as a parent for the purposes of this subchapter.

(c) A surrogate parent appointed by a school district may not:
(1) be an employee of the agency ~~state~~, the school district, or any other agency involved in the education or care of the child; or
(2) have any interest that conflicts with the interests of the child.

(d) A surrogate parent appointed by a district must:
(1) be willing to serve in that capacity;
(2) exercise independent judgment in pursuing the child's interests;
(3) ensure that the child's due process rights under applicable state and federal laws are not violated;
(4) complete a training program that complies with minimum standards established by agency rule within the time specified in Section 29.015(b);
(5) visit the child and the school where the child is enrolled;
(6) review the child's educational records;
(7) consult with any person involved in the child's education, including the child's:
(A) teachers;
(B) caseworkers;
(C) court-appointed volunteers;
(D) guardian ad litem;
(E) attorney ad litem;
(F) foster parent; and
(G) caregiver; and
(8) attend meetings of the child's admission, review, and dismissal committee.

(e) The district may appoint a person who has been appointed to serve as a child's guardian ad litem or as a court-certified volunteer advocate, as provided under Section 107.031(c), Family Code, as the child's surrogate parent.

(e-1) As soon as practicable after appointing a surrogate parent under this section, a school district shall provide written notice of the appointment to the child's educational decision-maker and caseworker as required under Section 25.007(b)(10)(H).

(f) If a court appoints a surrogate parent for a child with a disability under Section 263.0025, Family Code, and the school district determines that the surrogate parent ~~is failing to perform or~~ is not properly performing the duties listed under Subsection (d), the district shall consult with the Department of Family and Protective Services regarding whether ~~and appoint~~ another person should be appointed to serve as the surrogate parent for the child.

(g) On receiving notice from a school district under Subsection (f), if the Department of Family and Protective Services agrees with the district that ~~must promptly notify the court of the failure of~~ the appointed surrogate parent is unable or unwilling to properly perform the duties required under this section.
(1) the department shall promptly notify the court of the agreement; and
(2) as soon as practicable after receiving notice under Subdivision (1), the court shall:
(A) review the appointment; and
(B) enter any orders necessary to ensure the child has a surrogate parent who performs the duties required under this section.

Amended by: Acts 2017, 85th Leg., (HB 1556), Sec. 2 eff. September 1, 2017.

Section 107.031(c), Family Code.

(c) A court-certified volunteer advocate appointed under this section may be assigned to act as a surrogate parent for the child, as provided by 20 U.S.C. Section 1415(b), if:
(1) the child is in the conservatorship of the Department of Family and Protective Services;
(2) the volunteer advocate is serving as guardian ad litem for the child; ~~[and]~~
(3) a foster parent of the child is not acting as the child's parent under Section 29.015, Education Code; and
(4) the volunteer advocate completes a training program for surrogate parents that complies with minimum standards established by rule by the Texas Education Agency within the time specified by Section 29.015(b), Education Code.

Texas Family Code §263.0025. SPECIAL EDUCATION DECISION-MAKING FOR CHILDREN IN FOSTER CARE ~~APPOINTMENT OF SURROGATE PARENT~~.

(a) In this section, "child" means a child in the temporary or permanent managing conservatorship of the department who is eligible under Section 29.003, Education Code, to participate in a school district's special education program. ~~[If a child in the temporary or permanent conservatorship of the department is eligible under Section 29.003, Education Code, to participate in a school district's special education program, the court may, when necessary to ensure that the educational rights of the child are protected, appoint a surrogate parent who:~~

~~(1) is willing to serve in that capacity; and:~~

~~(2) meets the requirements of 20 U.S.C. Section 1415(b) and Section 29.001(10), Education Code.~~

(a-1) A foster parent for a child may act as a parent for the child, as authorized under 20 U.S.C. Section 1415(b), if:

(1) the rights and duties of the department to make decisions regarding the child's education under Section 153.371 have not been limited by court order; and

(2) the foster parent agrees to the requirements of Sections 29.015(a)(3) and (b), Education Code.

(a-2) Sections 29.015(b-1), (c), and (d), Education Code, apply to a foster parent who acts or desires to act as a parent for a child for the purpose of making special education decisions.

(b) To ensure the educational rights of a child are protected in the special education process, the court may appoint a surrogate parent for the child if:

(1) the child's school district is unable to identify or locate a parent for the child; or

(2) the foster parent of the child is unwilling or unable to serve as a parent for the purposes of this subchapter ~~[In appointing a surrogate parent for a child, the court shall give preferential consideration to a foster parent of the child as required under Section 29.015, Education Code].~~

(c) Except as provided by Subsection (d), the court may appoint a person to serve as a child's surrogate parent if the person:

(1) is willing to serve in that capacity; and

(2) meets the requirements of 20 U.S.C. Section 1415(b) ~~[If the court does not appoint a child's foster parent to serve as the child's surrogate parent, the court shall give consideration to:~~

(d) The following persons may not be appointed as a surrogate parent for the child:

(1) an employee of the department;

(2) an employee of the Texas Education Agency;

(3) an employee of a school or district; or

(4) an employee of any other agency that is involved in the education or care of the child.

(e) The court may appoint a child's guardian ad litem or court-certified volunteer advocate, as provided by Section 107.031(c), as the child's surrogate parent.

(f) In appointing a person to serve as the surrogate parent for a child, the court may consider the person's ability to meet the qualifications listed under Sections 29.0151(d)(2)-(8), Education Code.

(g) If the court prescribes training for a person who is appointed as the surrogate parent for a child, the training program must comply with the minimum standards for training established by rule by the Texas Education Agency.

SECTION 5. This Act takes effect September 1, 2017.

Texas Family Code §263.004. Notice to Court Regarding Education Decision-Making.

(a) Unless the rights and duties of the department under Section 153.371(10) to make decisions regarding the child's education have been limited by court order, the department shall file with the court a report identifying the name and contact information for each person who has been:

(1) designated by the department to make educational decisions on behalf of the child; and

(2) assigned to serve as the child's surrogate parent in accordance with 20 U.S.C. Section 1415(b) and Section 29.001(10), Education Code, for purposes of decision-making regarding special education services, if applicable.

(b) Not later than the fifth day after the date an adversary hearing under Section 262.201 or 262.205 is concluded, the information required by Subsection (a) shall be filed with the court and a copy shall be provided to the school the child attends.

(c) If a person other than a person identified in the report required by Subsection (a) is designated to make educational decisions or assigned to serve as a surrogate parent, the department shall file with the court an updated report that includes the information required by Subsection (a) for the designated or assigned person. The updated report must be filed not later than the fifth day after the date of designation or assignment.

Staff Training: Method to determine whether a child needs a surrogate parent.

Annually, the local campus principals, counselors and staff, along with the special education staff are trained on the situations in §300.519 in which a student would need a surrogate or the foster parent require training. The Special Education Director or designee will maintain the list and schedule training.

Assignment Guidelines

The principal or other person makes the request for a surrogate parent for an eligible WCSESSA child. Procedures for requesting a surrogate parent are as follows:

a. *Principal or other assigned staff person notifies the Special Education Director of need and of potential surrogate parents if they are aware of any potential volunteers.*
b. *The Special Education Director schedules and conducts the training using application form to document assurances below.*
c. *The Special Education Director notifies campus Administration of completed training and the names of new surrogate parents.*
d. *The Special Education Director, Principal or designee notifies/contacts the student's assigned surrogate parent when appropriate.*

Assurances

Assurances must be made by the individual selected to serve as a surrogate parent. These assurances are reviewed at the training and documented on the application form signed by the surrogate / foster parent.

- *The individual may have no personal or professional interest which conflicts with the interest of the child the surrogate parent represents;*
- *The individual may not be an employee of the WCSESSA or of any other public agency responsible for or involved in the education or care of the child the surrogate parent represents;*
- *The individual must have knowledge and skills that insure adequate representation of the child;*
- *The individual must be a resident of the member school district where the student attends, and*
- *The WCSESSA may select as a surrogate a person who is an employee of a nonpublic agency that only provides non-educational care for the child and who meets the standards above.*

**A foster parent in a home which is verified by the TDFPS or a child-placing agency shall 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 TDFPS.*

Documentation of Training for Volunteer as Surrogate Parent

(a.) The individual assigned to act as a surrogate parent must complete the training program within 90 calendar days after the effective date of initial assignment as a surrogate parent.
(b.) Once the 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 shall not be required by any school to complete the 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.
(c.) The WCSESSA may provide additional training to surrogates parents and/or parents; however, WCSESSA 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.
(d.) Prior to assigning an individual to act as a surrogate parent, training should be provided.
(e.) Individuals already serving as surrogate parents identified as not receiving previous training will receive training within 90 calendar days of identification.
(f.) The WCSESSA will keep records of those individuals who have received training and each person trained by our WCSESSA will be given a certificate to take should they move to another school and need evidence of training.

Documentation of Training for Assignment of Foster Parents as Surrogate Parents

(a.) A foster parent may act as parent of a child with a disability, in accordance with §300.20 relating to the definition of parent, if he/she complies with the requirements of TEC §29.015(b), relating to foster parents, including the completion of the training programs described in this section.

(b.) The foster parent must complete the training within 90 calendar days after the date of initial assignment as the surrogate parent, whichever comes later.

(c.) Once the 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 to complete the 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.

(d.) The WCSESSA may provide additional training to surrogates parents and/or parents; however, WCSESSA 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.

(e.) Prior to assigning a foster parent to act as a surrogate parent, training should be provided.

(f.) Individuals already serving as surrogate parents identified as not receiving previous training will receive training within 90 calendar days of identification if there is no evidence training was previously provided by (TDFPS).

(g.) The WCSESSA will keep records of those individuals who have received training and each person trained by our WCSESSA will be given a certificate to take should they move to another school and need evidence of training.

(h.) If the foster parent does not meet the criteria to serve as parent, the WCSESSA will appoint a surrogate parent. The WCSESSA will give preferential consideration to a foster parent of a student with a disability when assigning a surrogate parent for the child.

(i.) If the foster parent is denied serving as the surrogate parent, the WCSESSA will follow TAC §89.1047(d) to notify the foster parent of their right to file a complaint with TEA.

Surrogate Training Completed

When the applicant successfully completes the Surrogate Parent Training, a copy of those individuals trained as Surrogate Parents will be filed in the office of the Special Education Director.

Student in Conservatorship

TEC §25.001(g). Attendance Area

(g) A student who was enrolled in a primary or secondary public school before the student entered the conservatorship of the Department of Family and Protective Services and who is placed at a residence outside the attendance area for the school or outside the school district is entitled to continue to attend the school in which the student was enrolled immediately before entering conservatorship until the student successfully completes the highest grade level offered by the school at the time of placement without payment of tuition. The student is entitled to continue to attend the school regardless of whether the student remains in the conservatorship of the department for the duration of the student's enrollment in the school.

(g-1) If a student who is in the conservatorship of the department is enrolled in a primary or secondary public school, other than the school in which the student was enrolled at the time the student was placed in the conservatorship of the department, the student is entitled to continue to attend that school without payment of tuition until the student successfully completes the highest grade level offered by the school at the time of enrollment in the school, even if the child's placement is changed to a residence outside the attendance area for that school or outside the school district. The student is entitled to continue to attend the school regardless of whether the student remains in the conservatorship of the department for the duration of the student's enrollment in the school.

TEC §25.087 Excused Absense

(b) A school district shall excuse a student from attending school for:

(1) the following purposes, including travel for those purposes:

(A) observing religious holy days;

(B) attending a required court appearance;

(C) appearing at a governmental office to complete paperwork required in connection with the student's application for United States citizenship;

(D) taking part in a United States naturalization oath ceremony; [~~or~~]

(E) serving as an election clerk; or

(F) if the student is in the conservatorship of the Department of Family and Protective Services, participating, as determined and documented by the department, in an activity:

(i) ordered by a court under Chapter 262 or 263, Family Code, provided that it is not practicable to schedule the participation outside of school hours; or

(ii) required under a service plan under Subchapter B, Chapter 263, Family Code; or

(2) a temporary absence resulting from an appointment with a health care professional if that student commences classes or returns to school on the same day of the appointment.

TEC §25.007 Transferring Students (homeless or in substitute care)

(b) In recognition of the challenges faced by students who are homeless or in substitute care, the agency shall assist the transition of students who are homeless or in substitute care students from one school to another by:

(1) ensuring that school records for a student who is homeless or in substitute care are transferred to the student's new school not later than the 10th working day after the date the student begins enrollment at the school;

(2) developing systems to ease transition of a student who is homeless or in substitute care during the first two weeks of enrollment at a new school;

(3) developing procedures for awarding credit, including partial credit if appropriate, for course work, including electives, completed by a student who is homeless or in substitute care while enrolled at another school;

(4) developing procedures to ensure that a new school relies on decisions made by the previous school regarding placement in courses or educational programs of a student who is homeless or in substitute care and places the student in comparable courses or educational programs at the new school, if those courses or programs are available;

(5) promoting practices that facilitate access by a student who is homeless or in substitute care to extracurricular programs, summer programs, credit transfer services, electronic courses provided under Chapter 30A, and after-school tutoring programs at nominal or no cost;

(6) establishing procedures to lessen the adverse impact of the movement of a student who is homeless or in substitute care to a new school;

(7) entering into a memorandum of understanding with the Department of Family and Protective Services regarding the exchange of information as appropriate to facilitate the transition of students in substitute care from one school to another;

(8) encouraging school districts and open-enrollment charter schools to provide services for a student who is homeless or in substitute care in transition when applying for admission to postsecondary study and when seeking sources of funding for postsecondary study;

(9) requiring school districts, campuses, and open-enrollment charter schools to accept a referral for special education services made for a student who is homeless or in substitute care by a school by the student, and to provide comparable services to the student during the referral process or until the new school develops an individualized education program for the student;

(10) requiring school districts, campuses, and open-enrollment charter schools to provide notice to the child's educational decision-maker and caseworker regarding events that may significantly impact the education of a child, including:

(A) requests or referrals for an evaluation under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), or special education under Section 29.003;

(B) admission, review, and dismissal committee meetings;

(C) manifestation determination reviews required by Section 37.004(b);

(D) any disciplinary actions under Chapter 37 for which parental notice is required;

(E) citations issued for Class C misdemeanor offenses on school property or at school-sponsored activities;

(F) reports of restrain and seclusion required by Section 37.0021; ~~and~~

(G) use of corporate punishment as provided by Section 37.0011; and

(H) appointment of a surrogate parent for the child under Section 29.0151;

~~(10) providing other assistance as identified by the agency.~~

(11) developing procedures for allowing a student who is homeless or in substitute care who was previously enrolled in a course required for graduation the opportunity, to the extent practicable, to complete the course, at no cost to the student, before the beginning of the next school year;

(12) ensuring that a student who is homeless or in substitute care who is not likely to receive a high school diploma before the fifth school year following the student's enrollment in grade nine, as determined by the district, has the student's course credit accrual and personal graduation plan reviewed;

(13) ensuring that a student in substitute care who is in grade 11 or 12 be provided information regarding tuition and fee exemptions under Section 54.366 for dual-credit or other courses provided by a public institution of higher education for which a high school student may earn joint high school and college credit;

(14) designating at least one agency employee to act as a liaison officer regarding educational issues related to students in the conservatorship of the Department of Family and Protective Services; and

(15) providing other assistance as identified by the agency.

VII. INDEPENDENT EDUCATIONAL EVALUATION (IEE)

§300.502 Independent educational evaluation.

(a) General.

(1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) The WCSESSA must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.

Information on where an IEE may be obtained will be provided to parents on request. A list of individuals who can provide an IEE is available from the Special Education Office. The district criteria (State/Federal requirements) applicable for all evaluations (FIE Section 2 and 3 of this document) must also be followed for the IEE. See Evaluator Requirements found below. Contract evaluation personnel (which includes personnel who complete evaluations for Independent Educational Evaluations) must provide assessment results, recommendations and written report to WCSESSA at the same time the information is provided to parents.

(3) For the purposes of this subpart--

(i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the WCSESSA responsible for the education of the child in question; and

(ii) Public expense means that the WCSESSA either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with §300.103.

(b) Parent right to evaluation at public expense.

(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the WCSESSA, subject to the conditions in paragraphs (b) (2) through (4) of this section.

(2) If a parent requests an independent educational evaluation at public expense, the Wood County SSA must, without unnecessary delay, either--

(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

If the parent requests an IEE from any staff member or campus Principal, the parent will be provided the name and phone number of the Special Education Director and asked to notify that administrator immediately so that proper steps may be taken to address their request for an IEE. The Special Education Director, in consultation with appropriate WCSESSA staff, will determine whether to pay for the IEE or file for a due process hearing. The Special Education Administration will respond to the parent regarding the IEE request within 15 school days and follow required Notice procedures.

(3) If the WCSESSA files a due process complaint notice to request a hearing and the final decision is that the WCSESSA's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the WCSESSA may ask for the parent's reason why he or she objects to the public evaluation. However, the WCSESSA may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.

(5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

*If the parent requests an IEE during an ARD/IEP meeting, the minutes will document that the parent was asked to provide reasons why they object to the WCSESSA evaluation. If the parent does not provide any specific reason, that also will be documented in the minutes. The ARD Administrator or designee will immediately notify the Special Education Administrator of the parent request for an IEE in order to determine the district's response to the request. The district will not delay and will respond within the determined **school days** noted above.*

(c) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at private expense or shares with the WCSESSA an evaluation obtained at private expense, the results of the evaluation--

(1) Must be considered by the WCSESSA, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and

(2) May be presented by any party as evidence at a hearing on a due process complaint under subpart E of this part regarding that child.

(d) Requests for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.

(e) Agency criteria.

(1) If an independent educational 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 the WCSESSA uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(2) Except for the criteria described in paragraph (e)(1) of this section, the WCSESSA may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

District Steps as Soon as Notified of IEE Request:

Special Education Administration will notify parent the IEE request is received. Inform the parent that within 15 school days a decision will be made to either request a Due Process Hearing to defend district evaluation or pay parent for an IEE. Provide parent with Procedural Safeguards (if campus has not already done so) and provide parent the IEE guidelines. ***If decision is to pay for an IEE, Special Education Administration will:***

1. Notify parent and provide parent with copy of Federal and State requirements found in Section 2 FIE and Section 3 DISABILITY CRITERIA of operating guidelines.

2. Designate local district contact person for the parents to coordinate the IEE with campus staff. Encourage the parent pay close attention to the Evaluator Requirements and the reimbursement sections of these guidelines.

3. Provide parent a list of qualified examiners in the area.

EVALUATOR REQUIREMENTS

- *The independent examiner will coordinate activites with the district designee whose name was provided to the parent by the Special Education Administration.*
- *The independent examiner will have the same qualifications as the WCSESSA assessment personnel (e.g., psychologist, associate psychologist, Licensed Specialist in School Psychology, or educational diagnostician) and as required by Texas law and also described in Section 8)*
- *Each independent examiner must attach copies of his or her license(s) or certificate(s) to the evaluation, if previously not provided.*
- *The independent examiner may be requested to complete a conflict of interest form provided by the District indicating whether the examiner has a personal monetary interest in any service or program recommended by the examiner.*
- *The evaluation will be conducted in the school building to which the student is assigned, unless clearly not feasible.*
- *The independent examiner will have access to the student's cumulative folder and special education folders in gathering information about the student.*
- *The independent examiner may meet with the school ARD committee to gather information about a student prior to the assessment and to share information following the assessment.*
- *The independent examiner will follow federal and state assessment regulations and rules, reporting requirements and established eligibility criteria for the diagnosis of students with disabilities.*
- *The examiner will consider data obtained from the student's teacher or service provider through consultation and/or interview.*
- *The examiner will complete an observation of the student in the educational setting.*
- *The independent examiner will provide a written assessment report that shall address the presence or absence of those symptoms or conditions included in the specific eligibility criteria for the disability for which the student is being assessed. The report shall include the type and severity of the impairment and the functional implications for the educational process. The report must provide the*

ARD committee with sufficient information to determine whether or not the student has a disability and is in need of special education services.

- *The independent evaluation may be restricted to one assessment area upon mutual agreement by the WCSESSA and parent.*
- *The evaluator must be located within a 100 mile radius of the WCSESSA. This will allow the evaluator access to the public school for observation of the student and access to ARD/IEP meetings.*
- *Per Senate Bill 9, independent examiners must complete a state and national criminal history background search on those who will have direct contact with students, and to receive those results through the DPS criminal history clearinghouse (Fingerprint-based Applicant Clearinghouse of Texas –FACT). This must be completed prior to the assessment.*
- *The evaluator must provide information in the same timely manner as required by WCSESSA personnel including an original typed report to the WCSESSA within 30 calendar days from the date that an IEE is approved by WCSESSA and 10 days prior to the ARD meeting. The report must address the WCSESSA format (which will be provided to the evaluator) for assessment and eligibility. Protocols must be available for review and the report must include an original signature and title of all assessment personnel involved in the evaluation. The report must comply with all requirements of state and federal regulations.*

Steps to Follow for Parent to Request an IEE at Public Expense:

1. Parent discussed evaluation concerns and possible resolution during the ARD.
2. Parent may request IEE during the ARD meeting. We would appreciate the parent specifying areas of disagreement with ISD's evaluation and questions to be addressed by an IEE.
3. Request IEE preferably no later than six months following the WCSESSA evaluation in question.
4. If the Wood County SSA grants the IEE and decides not to go to a due process hearing to defend their own the parent will coordinate the IEE with the district staff per directions of the Special Education Administrator.
5. Provide name and credentials of evaluator to allow WCSESSA to:
a. check certification/license of evaluator and
b. contract directly with the evaluator.
6. Review all Requirements listed. An IEE will not be paid with district funds if the evaluator does not meet qualification criteria, if the IEE is not substantially compliant with federal, state and district criteria, or if the evaluator fee is not within the criteria provided to the parent.
7. The district and the independent evaluator will arrange schedule and confirm dates/times.
8. Upon completion of evaluation, the written report will be submitted to the parent and the district along with the Invoice for payment.
9. The district will review the report without delay and determine requirements were followed prior to payment.
10. Payment is made based on the business office schedule (usually 30 days).
11. The parent will be notified by the district if the IEE does not demonstrate substantial compliance.
12. If the parent requests an IEE from any staff member or campus Principal outside of an ARD meeting, the parent will be provided the name and phone number of the Special Education Director and asked to notify that administrator immediately so that proper steps may be taken to address their request for an IEE. The Special Education Director, in consultation with appropriate district staff, will determine whether to pay for the IEE or file for a due process hearing.

Reimbursement or Payment

Parents are free to select whomever they choose to perform the IEE, so long as the examiner meets the District's criteria. If parents select an examiner that is not on the District's list of qualified examiners, provided upon request, they should submit the name and vitae of the examiner with copies of certificates and/or licenses in advance of conducting the IEE in order that the District may confirm and notify the parents whether the examiner is qualified to perform the IEE. If the parents fail to submit the name and vitae of the examiner prior to conducting the IEE, the evaluator will not be paid if they do not meet the District's criteria. The parent and evaluator are taking an unnecessary risk of nonpayment. This should be determined prior to the IEE conducted.
Reimbursement/payment will be made directly to evaluator upon receipt of an invoice and the IEE which meets all of the WCSESSA's assessment criteria. Parents obtaining an IEE without following these procedures risk payment. Whenever an IEE is at public expense, the criteria under which the IEE is obtained, must be the

same as the criteria which the school uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's rights to an IEE.

Criteria For Fee Setting

- *The Wood County SSA will pay a fee for the IEE which allows a parent to choose from among the qualified professionals in the area.*
- *The WCSESSA will not pay unreasonably excessive fees. An unreasonably excessive fee is one which is 10% above the prevailing fees in the area (or 20% above the Medicaid rate) for the specific test being considered. A maximum cost cap for an IEE is _____.*
- *Upon receipt of an invoice for payment of an unreasonably excessive fee, the WCSESSA will notify the parent.*
- *Parents will be allowed the opportunity to demonstrate to an ARD committee that unique circumstances justify an IEE that does not fall within the WCSESSA's fee criteria. However, the payment decision will remain with the district.*
- *When service providers have a sliding scale fee based on parent income, the WCSESSA will pay the amount charged to the parent.*
- *In the event that a parent pursues an IEE independently, an original billing form must be submitted to the WCSESSA prior to payment. Before reimbursement or direct payment is authorized, criteria must be met not only regarding the fee, but also the evaluator criteria and the written report received and determined to have met the criteria for the IEE.*
- *Travel costs for examiner and/or parents will not exceed WCSESSA rates for travel as established by state guidelines.*

Parents Seeking Reimbursement For A Unilaterally Obtained IEE

- *The WCSESSA will not consider a parent request for payment for a unilaterally parent-initiated IEE unless the request is made within a reasonable time after receipt of the results of the evaluation. A reasonable time is defined as 90 calendar days.*
- *The WCSESSA can request a due process hearing to prove its own evaluation is appropriate. This can occur before an IEE is conducted or, in this scenario, after the parent has obtained the IEE and is seeking reimbursement.*
- *Parent must submit Invoice for payment, the evaluator's name and qualifications, the completed IEE that meets all criteria.*
- *The Wood County SSA will review all information submitted by the parent.*
- *The WCSESSA will deny payment of an IEE conducted by an evaluator who does not meet minimum qualifications.*
- *The WCSESSA will deny payment of an IEE which does not meet minimum Texas Education Agency criteria for the specific disability identified.*
- *The WCSESSA will deny payment of an IEE which does not meet substantial compliance with all state and federal requirements.*
- *The Wood County SSA will deny payment of an IEE that exceeds the maximum cost criteria.*

Consideration of Parent Initiated IEE

The results of a parent-initiated IEE obtained at private expense will be considered by the ARD committee in any decision made with respect to the provision of a free appropriate public education to the student (if the IEE meets federal and state criteria). Such consideration does not make the WCSESSA liable for payment of the evaluation.

Number of IEEs

A parent is entitled to only one IEE for each evaluation performed by the District, if the parent disagrees with the evaluation. This would include the three year re-evaluation or re-evaluations conducted more frequently. A parent is not entitled to multiple IEEs at public expense without an intervening re-evaluation. OSEP Policy Letter, EHLR 213.259 (1989); Hudson v. Wilson , 828 F.2d 1059, 1965 (4th Cir. 1989).

VIII. COMPLAINT PROCEDURES

TAC § 26.011. Complaints.
The board of trustees of each school district shall adopt a grievance procedure under which the board shall address each complaint that the board receives concerning violation of a right guaranteed by this chapter.

TAC §89.1150. General Provisions.
(a) It is the policy and intent of the Texas Education Agency (TEA) to encourage and support the resolution of any dispute that arises between a parent and a public education agency relating to the identification, evaluation, or educational placement of or the provision of a free appropriate public education (FAPE) to a student with a disability at the lowest level possible and in a prompt, efficient, and effective manner.
(b) The possible options for resolving disputes include, but are not limited to:
(1) meetings of the student's admission, review, and dismissal committee, including individualized education program (IEP) facilitation if offered by the public education agency in accordance with §89.1196 of this title (relating to Individualized Education Program Facilitation);
(2) meetings or conferences with the student's teachers;
(3) meetings or conferences, subject to the public education agency's policies, with the campus administrator, the special education director of the public education agency (or the shared services arrangement to which the public education agency may be a member), the superintendent of the public education agency, or the board of trustees of the public education agency;
(4) requesting state IEP facilitation in accordance with §89.1197 of this title (relating to State Individualized Education Program Facilitation);
(5) requesting mediation through the TEA in accordance with 34 Code of Federal Regulations (CFR), §300.506;
(6) filing a complaint with the TEA in accordance with 34 CFR, §300.153; or
(7) requesting a due process hearing through the TEA in accordance with 34 CFR, §§300.507-300.514.

TAC §89.1195. Special Education Complaint Resolution.
(a) In accordance with 34 Code of Federal Regulations (CFR), §300.151, the Texas Education Agency (TEA) has established a complaint resolution process that provides for the investigation and issuance of findings regarding alleged violations of Part B of the Individuals with Disabilities Education Act (IDEA).
(b) A complaint may be filed with the TEA by any individual or organization and must:
(1) be in writing;
(2) include the signature and contact information for the complainant;
(3) contain a statement that a public education agency has violated Part B of the IDEA; 34 CFR, §300.1 et seq.; or a state special education statute or administrative rule;
(4) include the facts upon which the complaint is based;
(5) if alleging violations with respect to a specific student, include:
(A) the name and address of the residence of the student;
(B) the name of the school the student is attending;
(C) in the case of a homeless child or youth (within the meaning of §725(2) of the McKinney-Vento Homeless Act (42 United States Code, §11434a(2)), available contact information for the student and the name of the school the student is attending;
(D) a description of the nature of the problem of the student, including facts relating to the problem; and
(E) a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed;
(6) allege a violation that occurred not more than one calendar year prior to the date the complaint is received; and
(7) be forwarded to the public education agency that is the subject of the complaint at the same time that the complaint is filed with the TEA.
(c) A complaint must be filed with the TEA by mail, hand-delivery, or facsimile. The TEA has developed a form that may be used by persons or organizations filing a complaint. The form is available on request from the TEA and is also available on the TEA website. The complaint timeline will commence the next business day after the day on which the TEA receives the complaint.

(d) If a complaint does not meet the requirements outlined in subsection (b) of this section, the TEA must notify the complainant of the deficiencies in the complaint.

(e) Upon receipt of a complaint that meets the requirements of this section, the TEA must initiate an investigation to determine whether the public education agency is in compliance with applicable law and regulations in accordance with the following procedures.

(1) The TEA must send written notification to the parties acknowledging receipt of a complaint.

(A) The notification must include:

(i) the alleged violations that will be investigated;

(ii) alternative procedures available to address allegations in the complaint that are outside of the scope of Part B of the IDEA; 34 CFR, §300.1, et seq.; or a state special education statute or administrative rule;

(iii) a statement that the public education agency may, at its discretion, investigate the alleged violations and propose a resolution of the complaint;

(iv) a statement that the parties have the opportunity to resolve the complaint through mediation in accordance with the procedures in §89.1193 of this title (relating to Special Education Mediation);

(v) a timeline for the public education agency to submit:

(I) documentation demonstrating that the complaint has been resolved; or

(II) a written response to the complaint and all documentation and information requested by the TEA;

(vi) a statement that the complainant may submit additional information about the allegations in the complaint, either orally or in writing within a timeline specified by the TEA, and may provide a copy of any additional information to the public education agency to assist the parties in resolving the dispute at the local level; and

(vii) a statement that the TEA may grant extensions of the timeline for a party to submit information under clause (v) or (vi) of this subparagraph at the request of either party.

(B) The public education agency must provide the TEA with a written response to the complaint and all documentation and information requested by the TEA. The public education agency must forward its response to the parent who filed the complaint at the same time that the response is provided to the TEA. The public education agency may also provide the parent with a copy of the documentation and information requested by the TEA. If the complaint was filed by an individual other than the student's parent the public education agency must forward a copy of the response to that individual only if written parental consent has been provided to the public education agency.

(2) If the complaint is also the subject of a due process hearing or if it contains multiple issues of which one or more are part of that due process hearing, the TEA must:

(A) set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing; and

(B) resolve any issue in the complaint that is not a part of the due process hearing.

(3) If an issue raised in the complaint has previously been decided in a due process hearing involving the same parties, the TEA must inform the complainant that the due process hearing decision is binding.

(4) The TEA has 60 calendar days after a valid written complaint is received to carry out the investigation and to resolve the complaint. The TEA may extend the time limit beyond 60 calendar days if exceptional circumstances, as determined by the TEA, exist with respect to a particular complaint. The parties will be notified in writing by the TEA of the exceptional circumstances, if applicable, and the extended time limit. The time limit may also be extended if the parties agree to extend it in order to engage in mediation pursuant to §89.1193 of this title or other alternative means of dispute resolution. In accordance with the Texas Education Code, §29.010(e), the TEA must expedite a complaint alleging that a public education agency has refused to enroll a student eligible for special education and related services or that otherwise indicates a need for expedited resolution, as determined by the TEA.

(5) During the course of the investigation, the TEA must:

(A) conduct an investigation of the complaint that must include a complete review of all relevant documentation and that may include interviews with appropriate individuals and an independent on-site investigation, if necessary;

(B) consider all facts and issues presented and the applicable requirements specified in law, regulations, or standards;

(C) make a determination of compliance or noncompliance on each issue in the complaint based upon the facts and applicable law, regulations, or standards and issue a written report of findings of fact and conclusions, including reasons for the decision, and any corrective actions that are required, including the time period within which each action must be taken;

(D) review any evidence that the public education agency has corrected noncompliance on its own initiative;

(E) ensure that the TEA's final decision is effectively implemented, if needed, through technical assistance activities, negotiations, and corrective actions to achieve compliance; and

(F) in the case of a complaint filed by an individual other than the student's parent, provide a copy of the written report only if written parental consent has been provided to the TEA.

(6) In resolving a complaint in which a failure to provide appropriate services is found, the TEA must address:

(A) the failure to provide appropriate services, including corrective action appropriate to address the needs of the student, including compensatory services, monetary reimbursement, or other corrective action appropriate to the needs of the student; and

(B) appropriate future provision of services for all students with disabilities.

(7) In accordance with 34 CFR, §300.600(e), the public education agency must complete all required corrective actions as soon as possible, and in no case later than one year after the TEA's identification of the noncompliance. A public education agency's failure to correct the identified noncompliance within the one-year timeline will result in an additional finding of noncompliance under 34 CFR, §300.600(e), and may result in sanctions against the public education agency in accordance with §89.1076 of this title (relating to Interventions and Sanctions).

(f) If a party to a complaint believes that the TEA's written report includes an error that is material to the determination in the report, the party may submit a signed, written request for reconsideration to the TEA by mail, hand-delivery, or facsimile within 15 calendar days of the date of the report. The party's reconsideration request must identify the asserted error and include any documentation to support the claim. The party filing a reconsideration request must forward a copy of the request to the other party at the same time that the request is filed with the TEA. The other party may respond to the reconsideration request within five calendar days of the date on which the TEA received the request. The TEA will consider the reconsideration request and provide a written response to the parties within 45 calendar days of receipt of the request. The filing of a reconsideration request must not delay a public education agency's implementation of any corrective actions required by the TEA.

(g) In accordance with 34 CFR, §300.151, the TEA's complaint resolution procedures must be widely disseminated to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

If there is a dispute relating to the identification, evaluation, or educational placement of or the provision of a free appropriate public education (FAPE), to a student with a disability, it is the intent of the WCSESSA to encourage and support the resolution of any dispute at the lowest level possible and in a prompt, efficient, and effective manner.

The WCSESSA should always be sure the parents have a current Procedural Safeguards document if there is disagreement expressed by the parent. If the parents say they do not have the document, provide them with the document, an explanation, and keep documentation that they have received the document. This documentation of receipt of the Procedural Safeguards is kept in the Special Education student eligibility file. The possible options for resolving disputes include, but are not limited to §89.1150(c) found on the following pages below:

Schools should contact the appropriate Special Education Administrator as soon as there is reason to believe any type of complaint will be made.

A. Administration may encourage parents to follow local complaint procedures. The following may also be suggested:

1. schedule an ARD Committee meeting to discuss concern,

2. follow 10 day recess procedures to try to reach mutual agreement (see ARD Section),

3. encourage the parents to contact the Special Education Director for a meeting to discuss possible alternatives or mediation.

B. Parents may notify the Texas Education Agency and file a complaint. The TEA will:

1. collect information concerning special education and analyzing the information in conjunction with other information on file with the TEA;

2. respond to inquiries concerning special education services;

3. take appropriate action on substantial complaints;

4. engage in mediation activities; and

5. provide information on the formal procedures available in the impartial hearing process. Complaint must include: §300.153.

TAC §89.1196 IEP Facilitation: See Section 4a. IX. Mutual Agreement for entire text of TAC §89.1196.

State Complaint Procedures

§300.151 Adoption of State complaint procedures.

(a) General. Each SEA must adopt written procedures for--

(1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of §300.153 by--

(i) Providing for the filing of a complaint with the SEA; and

(ii) At the SEA's discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint; and

(2) Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State procedures under §§300.151 through 300.153.

(b) Remedies for denial of appropriate services. In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address--

(1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and

(2) Appropriate future provision of services for all children with disabilities. (Authority: 20 U.S.C. 1221e-3)

§300.152 Minimum State complaint procedures.

(a) Time limit; minimum procedures. Each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under §300.153 to--

(1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;

(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(3) Provide the WCSESSA with the opportunity to respond to the complaint, including, at a minimum--

(i) At the discretion of the WCSESSA, a proposal to resolve the complaint; and

(ii) An opportunity for a parent who has filed a complaint and the WCSESSA to voluntarily engage in mediation consistent with §300.506;

(4) Review all relevant information and make an independent determination as to whether the WCSESSA is violating a requirement of Part B of the Act or of this part; and

(5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains--

(i) Findings of fact and conclusions; and

(ii) The reasons for the SEA's final decision.

(b) Time extension; final decision; implementation. The SEA's procedures described in paragraph (a) of this section also must--

(1) Permit an extension of the time limit under paragraph (a) of this section only if--

(i) Exceptional circumstances exist with respect to a particular complaint; or

(ii) The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the WCSESSA involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section; or to engage in other alternative means of dispute resolution, if available in the State; and

(2) Include procedures for effective implementation of the SEA's final decision, if needed, including--

(i) Technical assistance activities;

(ii) Negotiations; and

(iii) Corrective actions to achieve compliance.

(c) Complaints filed under this section and due process hearings under §300.507 and §§300.530 through 300.532.

(1) If a written complaint is received that is also the subject of a due process hearing under §300.507 or §§300.530 through 300.532, or the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.

(2) If an issue is raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties--

(i) The due process hearing decision is binding on that issue; and

(ii) The SEA must inform the complainant to that effect.

(3) A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the SEA. (Authority: 20 U.S.C. 1221e-3)

§300.153 Filing a complaint.

(a) An organization or individual may file a signed written complaint under the procedures described in §§300.151 through 300.152.

(b) The complaint must include--

(1) A statement that a public agency has violated a requirement of Part B of the Act or of this part;

(2) The facts on which the statement is based;

(3) The signature and contact information for the complainant; and

(4) If alleging violations with respect to a specific child--

(i) The name and address of the residence of the child;

(ii) The name of the school the child is attending;

(iii) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;

(iv) A description of the nature of the problem of the child, including facts relating to the problem; and

(v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §300.151.

(d) The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the SEA.

§300.507 Filing a due process complaint.

(a) General.

(1) A parent or the WCSESSA may file a due process complaint on any of the matters described in §300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).

(2) The due process complaint must allege a violation that occurred not more than two years before the date the parent or WCSESSA knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in §300.511(f) apply to the timeline in this section.

(b) Information for parents. The WCSESSA must inform the parent of any free or low-cost legal and other relevant services available in the area if--

(1) The parent requests the information; or

(2) The parent or the agency files a hearing under this section.

(Authority: 20 U.S.C. 1415(b)(6))

§300.508 Due process complaint.

(a) General.

(1) The WCSESSA must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).

(2) The party filing a due process complaint must forward a copy of the due process complaint to the SEA.

(b) Content of complaint. The due process complaint required in paragraph (a)(1) of this section must include--

(1) The name of the child;
(2) The address of the residence of the child;
(3) The name of the school the child is attending;
(4) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;
(5) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
(6) A proposed resolution of the problem to the extent known and available to the party at the time.

(c) Notice required before a hearing on a due process complaint. A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section.

(d) Sufficiency of complaint.
(1) The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (b) of this section.
(2) Within 5 days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of paragraph (b) of this section, and must immediately notify the parties in writing of that determination.
(3) A party may amend its due process complaint only if--
(i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to §300.510; or
(ii) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.
(4) If a party files an amended due process complaint, the timelines for the resolution meeting in §300.510(a) and the time period to resolve in §300.510(b) begin again with the filing of the amended due process complaint.

(e) LEA response to a due process complaint.
(1) If the WCSESSA has not sent a prior written notice under §300.503 to the parent regarding the subject matter contained in the parent's due process complaint, the WCSESSA must, within 10 days of receiving the due process complaint, send to the parent a response that includes--
(i) An explanation of why the WCSESSA proposed or refused to take the action raised in the due process complaint;
(ii) A description of other options that the IEP Team considered and the reasons why those options were rejected;
(iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
(iv) A description of the other factors that are relevant to the agency's proposed or refused action.
(2) A response by an LEA under paragraph (e) (1) of this section shall not be construed to preclude the WCSESSA from asserting that the parent's due process complaint was insufficient, where appropriate.

(f) Other party response to a due process complaint. Except as provided in paragraph (e) of this section, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.
(Authority: 20 U.S.C. 1415(b)(7), 1415(c)(2))

§300.509 Model forms.
(a) Each SEA must develop model forms to assist parents in filing a due process complaint in accordance with §§300.507(a) and 300.508(a) through (c) and to assist parents and other parties in filing a State complaint under §§300.151 through 300.153. However the SEA or LEA may not require the use of the model forms.
(b) Parents, public agencies, and other parties may use the appropriate model form described in paragraph (a) of the section, or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in §300.508(b) for filing a due process complaint, or the requirements in §300.153(b) for filing a State complaint. (Authority: 20 U.S.C. 1415(b)(8))

http://www.tea.state.tx.us/index2.aspx?id=2147504486

§300.510 Resolution process.

(a) Resolution meeting.

(1) Within 15 days of receiving notice of the parents' due process complaint, and prior to the initiation of a due process hearing under §300.511, the WCSESSA must convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that--

(i) Includes a representative of the WCSESSA who has decision-making authority on behalf of that agency; and

(ii) May not include an attorney of the WCSESSA unless the parent is accompanied by an attorney.

(2) The purpose of the meeting is for the parents of the child to discuss their due process complaint, and the facts that form the basis of the due process complaint, so that the WCSESSA has the opportunity to resolve the dispute that is the basis for the due process complaint.

(3) The meeting described in paragraph (a)(1) and (2) of this section need not be held if--

(i) The parents and the WCSESSA agree in writing to waive the meeting; or

(ii) The parents and the WCSESSA agree to use the mediation process described in §300.506.

(4) The parents and the WCSESSA determine the relevant members of the IEP Team to attend the meeting.

(b) Resolution period.

(1) If the WCSESSA has not resolved the due process complaint to the satisfaction of the parents within 30 days of the receipt of the due process complaint, the due process hearing must occur.

(2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under §300.515 begins at the expiration of this 30-day period.

(3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of a parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

(4) If the WCSESSA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in §300.322(d)), the WCSESSA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.

(5) If the WCSESSA fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

(c) Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing in §300.515(a) starts the day after one of the following events:

(1) Both parties agree in writing to waive the resolution meeting;

(2) After either the mediation or resolution meeting starts but before the end of the 30-day resolution period, the parties agree in writing that no agreement is possible;

(3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or WCSESSA withdraws from the mediation process.

(d) Written settlement agreement. If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is--

(1) Signed by both the parent and a representative of the agency who has the authority to bind the agency; and

(2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, or by the SEA, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements, pursuant to §300.537.

(e) Agreement review period. If the parties execute an agreement pursuant to paragraph (c) of this section, a party may void the agreement within 3 business days of the agreement's execution.

(Authority: 20 U.S.C. 1415(f)(1)(B))

This process allows an opportunity for the school to resolve the parent's complaint. This can take up to 30 days and the timelines for a due process hearing begin to run only after those first 30 days. Also, there is an "expedited hearing" in the case of a disciplinary appeal.

Children with Disabilities Enrolled by their Parents in Private Schools

§300.140 Due process complaints and State complaints. *(See also Section 5. of this manual which includes Parentally Placed Students in Private Schools)*

(a) Due process not applicable, except for child find.

(1) Except as provided in paragraph (b) of this section, the procedures in §§300.504 through 300.519 do not apply to complaints that an LEA has failed to meet the requirements of §§300.132 through 300.139, including the provision of services indicated on the child's services plan.

(b) Child find complaints—to be filed with the LEA in which the private school is located.

(1) The procedures in §§300.504 through 300.519 apply to complaints that an LEA has failed to meet the child find requirements in §§300.131 including the requirements in §§300.300 through 300.311.

(2) Any due process complaint regarding the child find requirements (as described in paragraph (b)(1) of the section) must be filed with the LEA in which the private school is located and a copy must be forwarded to the SEA.

(c) State complaints.

(1) Any complaints that an SEA or LEA has failed to meet the requirements of §§300.132 through 300.135 and §§300.137 through 300.134 must be filed under the procedures in §§300.151 through 300.153.

(2) A complaint filed by a private school official under §300.136(a) must be filed with the SEA in accordance with the procedures in §300.136(b). (Authority: 20 U.S.C. 1412(a)(10)(A))

TAC §89.1096. Provision of Services for Students Placed by their Parents in Private Schools or Facilities.

(f) Complaints regarding the implementation of the components of the student's IEP that have been selected by the parent and the district under subsection (c) of this section may be filed with the Texas Education Agency under the procedures in 34 CFR, §§300.151-300.153. Additionally, parents may request mediation as outlined in 34 CFR, §300.506. The procedures in 34 CFR, §§300.300, 300.504, 300.507, 300.508, and 300.510-300.518 (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 the district under subsection (c). *(subsection (c) refers to dual enrollment and this is found in this manual in Section 4 – IEP)*

IX. MEDIATION

§300.506 Mediation.

(a) General. The WCSESSA must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

(b) Requirements. The procedures must meet the following requirements:

(1) The procedures must ensure that the mediation process--

(i) Is voluntary on the part of the parties;

(ii) Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Act; and

(iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(2) The WCSESSA may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party--

(i) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under section 671 or 672 of the Act; and

(ii) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

(3) (i) The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(ii) The SEA must select mediators on a random, rotational, or other impartial basis.

(4) The State must bear the cost of the mediation process, including the costs of meetings described in paragraph (b)(2) of this section.

(5) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

(6) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that--

(i) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding arising from that dispute; and

(ii) Is signed by both the parent and a representative of the agency who has the authority to bind such agency.

(7) A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceedings arising from that dispute of any Federal court or State court of a State receiving assistance under this part.

(c) Impartiality of mediator.

(1) An individual who serves as a mediator under this part--

(i) May not be an employee of the SEA or the WCSESSA that is involved in the education or care of the child; and

(ii) Must not have a personal or professional interest that conflicts with the person's objectivity.

(2) A person who otherwise qualifies as a mediator is not an employee of an WCSESSA or State agency described under §300.228 solely because he or she is paid by the agency to serve as a mediator.

TAC §89.1193. Special Education Mediation.

(a) In accordance with 34 Code of Federal Regulations (CFR), §300.506, the Texas Education Agency (TEA) has established a mediation process to provide parents and public education agencies with an opportunity to resolve disputes involving any matter arising under Part B of the Individuals with Disabilities Education Act (IDEA) or 34 CFR, §300.1 et seq. Mediation is available to resolve these disputes at any time.

(b) The mediation procedures must ensure that the process is:

(1) voluntary on the part of the parties;

(2) not used to deny or delay a parent's right to a due process hearing or to deny any other rights afforded under Part B of the IDEA; and

(3) conducted by a qualified and impartial mediator who is trained in effective mediation techniques and who is knowledgeable in laws and regulations relating to the provision of special education and related services.

(c) A request for mediation must be in writing and must be filed with the TEA by mail, hand-delivery, or facsimile. The TEA has developed a form that may be used by parties requesting mediation. The form is available on request from the TEA and is also available on the TEA website.

(d) The TEA will maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(e) An individual who serves as a mediator:

(1) must not be an employee of the TEA or the public education agency that is involved in the education or care of the child who is the subject of the mediation process;

(2) must not have a personal or professional conflict of interest, including relationships or contracts with schools or parents outside of mediations assigned by the TEA; and

(3) is not an employee of the TEA solely because the individual is paid by the TEA to serve as a mediator.

(f) The TEA will select mediators on a random, rotational, or other impartial basis. Selecting mediators on an impartial basis includes permitting the parties involved in a dispute to agree on a mediator from the TEA's list of mediators. If the parties agree to a mediator, they must advise the TEA of the desired mediator. The TEA will provide the parties with written notice of the specific mediator assigned to conduct the mediation. The parties must not contact a mediator on the TEA's list of mediators until the TEA has provided the parties with the written notice of the mediator assignment.

(g) If a mediator is also a hearing officer under §89.1170 of this title (relating to Impartial Hearing Officer), that individual may not serve as a mediator if he or she is the hearing officer in a pending due process hearing involving the same student who is the subject of the mediation process or was the hearing officer in a previous due process hearing involving the student who is the subject of the mediation process.

(h) The TEA will bear the cost of the mediation process.

(i) A mediation session must be scheduled in a timely manner and held in a location that is convenient to the parties.

(j) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that:

(1) states that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(2) is signed by both the parent and a representative of the public education agency who has the authority to bind the public education agency.

(k) A written, signed mediation agreement under subsection (j) of this section is enforceable in any state or federal court of competent jurisdiction.

(l) Discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings of any state or federal court.

TEA guidance and forms found at this website will be used.
http://tea.texas.gov/About_TEA/Legal_Services/Special_Education/Office_of_Legal_Services,_Special_Education_Mediation_Program/

X. DUE PROCESS HEARING

§300.511 Impartial due process hearing.

(a) General. Whenever a due process complaint is filed under §300.507, the parents or the WCSESSA involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§300.507 through 300.508, and §300.510.

(b) Agency responsible for conducting the due process hearing. The hearing described in paragraph (a) of this section must be conducted by the SEA or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the SEA.

(c) Impartial hearing officer.

(1) At a minimum, a hearing officer--

(i) Must not be--

(A) An employee of the SEA or the WCSESSA that is involved in the education or care of the child; or

(B) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

(ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;

(iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(2) A person who otherwise qualifies to conduct a hearing under paragraph (c)(1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(3) Each public agency must keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

(d) Subject matter of due process hearings. The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under §300.508(b), unless the other party agrees otherwise.

(e) Timeline for requesting a hearing. A parent or agency must request an impartial hearing on their due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that State law.

(f) Exceptions to the timeline. The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to--

(1) Specific misrepresentations by the WCSESSA that it had resolved the problem forming the basis of the due process complaint; or

(2) The WCSESSA's withholding of information from the parent that was required under this part to be provided to the parent.

Hearing Rights

§300.512 Hearing rights.

(a) General. Any party to a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534, or an appeal conducted pursuant to §300.514, has the right to--

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities, except that whether parties have the right to be represented by non-attorneys at due process hearings is determined under Texas law;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;

(4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and

(5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(b) Additional disclosure of information.

(1) At least five business days prior to a hearing conducted pursuant to §300.511(a), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

(2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(c) Parental rights at hearings. Parents involved in hearings must be given the right to--

(1) Have the child who is the subject of the hearing present;

(2) Open the hearing to the public; and

(3) Have the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section provided at no cost to parents.

TEC §29.0162. Representation in Special Education Due Process Hearing.

(a) A person in an impartial due process hearing brought under 20 U.S.C. Section 1415 may be represented by:

(1) an attorney who is licensed in this state; or

(2) an individual who is not an attorney licensed in this state but who has special knowledge or training with respect to problems of children with disabilities and who satisfies qualifications under Subsection (b).

(b) The commissioner by rule shall adopt additional qualifications required of a representative for purposes of Subsection (a)(2). The rules must:

(1) prohibit an individual from being a representative under Subsection (a)(2) opposing a school district if:

(A) the individual has prior employment experience with the district; and

(B) the district raises an objection to the individual serving as a representative; and

(2) include requirements that the representative have knowledge of:

(A) special education due process rules, hearings, and procedure; and

(B) federal and state special education laws.

(c) A special education due process hearing officer shall determine whether an individual satisfies qualifications under Subsections (a)(2) and (b).

(d) The agency is not required to license or in any way other than as provided by Subsection (b) regulate representatives described by Subsection (a)(2) in a special education impartial due process hearing.

TAC §89.1151. Special Education Due Process Hearings.

(a) A parent or public education agency may initiate a due process hearing as provided in 34 Code of Federal Regulations (CFR), §300.507 and §300.508.

(b) The Texas Education Agency will implement a one-tier system of hearings. The proceedings in hearings will be governed by the provisions of 34 CFR, §§300.507-300.515 and 300.532, if applicable, and this division.

(c) A parent or public education agency must request a hearing within one year of the date the parent or public education agency knew or should have known about the alleged action that serves as the basis for the request.

(d) The timeline described in subsection (c) of this section does not apply to a parent if the parent was prevented from filing a request for a due process hearing due to:

(1) specific misrepresentations by the public education agency that it had resolved the problem forming the basis of the request for a hearing; or

(2) the public education agency's withholding of information from the parent that was required by 34 CFR, §300.1, et seq. to be provided to the parent. *Amended to be effective March 1, 2017, 42 TexReg 760.*

(e) TEA will include in the Notice of Procedural Safeguards a statement that the statute of limitations for the parent of a student to request an impartial due process hearing under 20 USC, §1415(b), may be tolled if:

(1) the parent is an active-duty member of the armed forces, the Commissioned Corps of teh National Oceanic and Atmospheric Administration, or the Commissioned Corps of the United States Public Health Service; and

(2) 50 USC, §3936, applies to the parent.

TAC §89.1165. Request for Hearing.

(a) A request for a due process hearing (due process complaint) must be in writing and must be filed with the Texas Education Agency (TEA). The request may be filed by mail, hand-delivery, or facsimile.

(b) The party filing a request for a hearing must forward a copy of the request to the non-filing party at the same time that the request is filed with the TEA. The timelines applicable to hearings will commence the calendar day after the non-filing party receives the request. Unless rebutted, it will be presumed that the non-filing party received the request on the date it is sent to the parties by the TEA.

(c) The request for due process hearing must include:
(1) the name of the child;
(2) the address of the residence of the child;
(3) the name of the school the child is attending;
(4) in the case of a homeless child or youth (within the meaning of §725(2) of the McKinney-Vento Homeless Assistance Act (42 United States Code §11434a(2)), available contact information for the child, and the name of the school the child is attending;
(5) a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
(6) a proposed resolution of the problem to the extent known and available to the party at the time.

(d) A party may not have a due process hearing until the party files a request for a due process hearing that meets the requirements of paragraph (c) of this section.

(e) The TEA has developed a model form that may be used by parents and public education agencies to request a hearing. The form is available on request from the TEA and on the TEA website. http://tea.texas.gov/About_TEA/Legal_Services/Special_Education/Due_Process_Hearings/Office_of_Legal_Services,_Special_Education_Due_Process_Hearing_Program/

TAC §89.1170. Impartial Hearing Officer.

(a) The Texas Education Agency (TEA) will maintain a pool of impartial hearing officers to conduct due process hearings. The TEA may ~~will~~ assign cases to hearing officers who are private practice attorneys based on an alphabetical rotation. The TEA will assign cases to hearing officers who are employed by the State Office of Administrative Hearings (SOAH) in accordance with the procedures specified in the interagency contract between the TEA and SOAH. If, however, a request for a hearing relates to the same student who was involved in another hearing that was filed within the last 12 months, the TEA will assign the recently filed hearing request to the same hearing officer who presided over the previous hearing. In addition, the same hearing officer may be assigned to hearings involving siblings that are filed within 12 months of each other

(b) If a hearing officer is also a mediator under §89.1193 of this title (relating to Special Education Mediation), that individual will not be assigned as hearing officer if he or she is the mediator in a pending mediation involving the same student who is the subject of the hearing or was the mediator in a previous mediation involving the student who is the subject of the hearing.

(c) A hearing officer must possess the knowledge and abilities described in 34 Code of Federal Regulations, §300.511(c), and must not be:
(1) an employee of the TEA or the public agency that is involved in the education or care of the child who is the subject of the hearing; or
(2) a person having a personal or professional interest that conflicts with the person's objectivity in the hearing.

(d) A hearing officer is not an employee of the TEA solely because the individual is paid by the TEA to serve as a hearing officer.

(e) A hearing officer has the authority to administer oaths; call and examine witnesses; rule on motions, including discovery and dispositive motions; determine admissibility of evidence and amendments to pleadings; maintain decorum; schedule and recess the proceedings from day to day; and make any other orders as justice requires, including the application of sanctions as necessary to maintain an orderly hearing process.

(f) If a hearing officer is removed, dies, becomes disabled, or withdraws from a hearing before the completion of duties, the TEA will designate a substitute hearing officer to complete the performance of duties without the necessity of repeating any previous proceedings.

(g) A party to a hearing who has grounds to believe that the assigned hearing officer cannot afford the party a fair and impartial hearing due to bias, prejudice, or a conflict of interest may file a written request with the assigned hearing officer asking that the hearing officer recuse himself or herself from presiding over the hearing. Any such written request must state the grounds for the request and the facts upon which the request is based. Upon receipt of a request, the assigned hearing officer must review the request and determine the sufficiency of the grounds stated in the request. The hearing officer then must prepare a written order concerning the request and serve the order on the parties to the hearing within three business days of receiving the request. If the hearing officer finds that the grounds for recusal are insufficient, the TEA will assign a second hearing officer to review the request. The second hearing officer must rule on the request and serve a written order on the parties to the hearing within three business days of receiving the assignment. If the second hearing officer also determines that the grounds for recusal are insufficient, the assigned hearing officer will continue to preside over the hearing. If either the assigned hearing officer or the second hearing

officer finds that the grounds for recusal are sufficient, the TEA will assign another hearing officer to preside over the remainder of the proceedings in accordance with the procedures in subsection (a) of this section.

TAC §89.1175. Representation in Special Education Due Process Hearings.

(a) A party to a due process hearing may represent himself or herself or be represented by:
(1) an attorney who is licensed in the State of Texas; or
(2) an individual who is not an attorney licensed in the State of Texas but who has special knowledge or training with respect to problems of children with disabilities and who satisfies the qualifications of this section.

(b) A party who wishes to be represented by an individual who is not an attorney licensed in the State of Texas must file a written authorization with the hearing officer promptly after filing the request for a due process hearing or promptly after retaining the services of the non-attorney representative. The party must forward a copy of the written authorization to the opposing party at the same time that the written authorization is filed with the hearing officer.

(c) The written authorization must be on the form provided in this subsection.
http://www.sos.state.tx.us/texreg/archive/October202017/tables-and-graphics/201704054-1.pdf

(d) The written authorization must include the non-attorney representative's name and contact information and a description of the non-attorney representative's:
(1) special knowledge or training with respect to problems of children with disabilities;
(2) knowledge of the rules and procedures that apply to due process hearings, including those in 34 Code of Federal Regulations, §§300.507-300.515 and 300.532, if applicable, and this division;
(3) knowledge of federal and state special education laws, regulations, and rules; and
(4) educational background.

(e) The written authorization must state the party's acknowledgment of the following:
(1) the non-attorney representative has been given full authority to act on the party's behalf with respect to the hearing;
(2) the actions or omissions by the non-attorney representative are binding on the party, as if the party had taken or omitted those actions directly;
(3) documents are deemed to be served on the party if served on the non-attorney representative;
(4) communications between the party and a non-attorney representative are not generally protected by the attorney-client privilege and may be subject to disclosure during the hearing proceeding;
(5) neither federal nor state special education laws provide for the recovery of fees for the services of a non-attorney representative; and
(6) it is the party's responsibility to notify the hearing officer and the opposing party of any change in the status of the authorization and that the provisions of the authorization will remain in effect until the party notifies the hearing officer and the opposing party of the party's revocation of the authorization.

(f) If the non-attorney representative receives monetary compensation in exchange for representing the party in the due process hearing, the written authorization must affirm the following:
(1) the non-attorney representative has agreed to abide by a voluntary code of ethics and professional conduct during the period of representation; and
(2) the non-attorney representative and the party have entered into a confidential, writte representation agreement that includes a process for resolving any disputes that may arise between the non-attorney representative and the party.

(g) ~~(f)~~ The written authorization must be signed and dated by the party.

(h) ~~(g)~~ An individual is prohibited from being a party's representative under subsection (a)(2) of this section if the individual has prior employment experience with the school district and the school district raises an objection to the individual serving as a representative based on the individual's prior employment experience. No other objections to a party's representation by a non-attorney are permitted under this section.

(i) ~~(h)~~ Upon receipt of a written authorization filed under this section, the hearing officer must promptly determine whether the non-attorney representative is qualified and meets the requirements to represent the party in the hearing and must notify the parties in writing of the determination. A hearing officer's determination is final and not subject to review or appeal.

(j) ~~(i)~~ A non-attorney representative may not file pleadings or other documents on behalf of a party, present statements and arguments on behalf of a party, examine and cross-examine witnesses, offer and introduce evidence, object to the introduction of evidence and testimony, or engage in other activities in a representative capacity unless the hearing officer has reviewed a written authorization filed under this section and determined that the non-attorney representative is qualified to represent the party in the hearing.

(k) ~~(j)~~ In accordance with the Texas Education Code, §38.022, a school district may require an attorney or a non-attorney representative who enters a school campus to display his or her driver's license or another form of government-issued identification. A school district may also verify whether the representative is a registered sex offender and may apply a policy adopted by its board of trustees regarding the action to be taken when a visitor to a school campus is identified as a sex offender. *Amended to be effective March 1, 2017, 42 TexReg 760.*

TAC §89.1180. Prehearing Procedures**.**

(a) Promptly upon being assigned to a due process hearing, the hearing officer will forward to the parties a scheduling order which sets the time, date, and location of the hearing and contains the timelines for the following actions, as applicable:
(1) Response to Request for a Due Process Hearing (34 Code of Federal Regulations (CFR), §300.508(f));
(2) Resolution Meeting (34 CFR, §300.510(a));
(3) Contesting Sufficiency of the Request for a Hearing (34 CFR, §300.508(d));
(4) Resolution Period (34 CFR, §300.510(b));
(5) Five-Business Day Disclosure (34 CFR, §300.512(a)(3)); and
(6) the date by which the final decision of the hearing officer must be issued (34 CFR, §300.515 and §300.532(c)(2)).

(b) The hearing officer must schedule a prehearing conference to be held at a time reasonably convenient to the parties to the hearing. The prehearing conference must be held by telephone unless the hearing officer determines that circumstances require an in-person conference.

(c) The prehearing conference must be recorded and transcribed by a court reporter, who will promptly prepare a transcript of the prehearing conference for the hearing officer with copies to each of the parties.

(d) The purpose of the prehearing conference will be to consider any of the following:
(1) specifying issues as set forth in the request for a hearing;
(2) admitting certain assertions of fact or stipulations;
(3) establishing any limitations on the number of witnesses and the time allotted for presenting each party's case; and/or
(4) discussing other matters which may aid in simplifying the proceeding or disposing of matters in controversy, including settling matters in dispute.

(e) Promptly upon the conclusion of the prehearing conference, the hearing officer will issue and deliver to the parties a written prehearing order which confirms and/or identifies:
(1) the time, place, and date of the hearing;
(2) the issues to be adjudicated at the hearing;
(3) the relief being sought at the hearing;
(4) the deadline for disclosure of evidence and identification of witnesses, which must be at least five business days prior to the scheduled date of the hearing (hereinafter referred to as the "Disclosure Deadline");
(5) the date by which the final decision of the hearing officer must be issued; and
(6) other information determined to be relevant by the hearing officer.

(f) No pleadings, other than the request for a hearing, and the response to the request for a hearing, if applicable, are mandatory, unless ordered by the hearing officer. Any pleadings after the request for a hearing must be filed with the hearing officer. Copies of all pleadings must be sent to all parties of record in the hearing and to the hearing officer. If a party is represented by an attorney or a non-attorney determined by the hearing officer to be qualified to represent the party, all copies must be sent to the attorney of record or non-attorney representative, as applicable. Facsimile copies may be substituted for copies sent by other means. An affirmative statement that a copy of the pleading has been sent to all parties and the hearing officer is sufficient to indicate compliance with this subsection.

(g) Discovery methods are limited to those specified in the Administrative Procedure Act (APA), Texas Government Code, Chapter 2001, and may be further limited by order of the hearing officer. Upon a party's request to the hearing officer, the hearing officer may issue subpoenas and commissions to take depositions under the APA. Subpoenas and commissions to take depositions must be issued in the name of the Texas Education Agency.

(h) On or before the Disclosure Deadline (which must be at least five business days prior to a scheduled hearing), each party must disclose and provide to all other parties and the hearing officer copies of all evidence (including, without limitation, all evaluations completed by that date and recommendations based on those evaluations) that the party intends to use at the hearing. An index of the documents disclosed must be included with and accompany the documents. Each party must also include with the documents disclosed a list of all

witnesses (including their names, addresses, phone numbers, and professions) that the party anticipates calling to testify at the hearing.

(i) A party may request a dismissal or nonsuit of a hearing to the same extent that a plaintiff may dismiss or nonsuit a case under the Texas Rules of Civil Procedure, Rule 162. However, if a party requests a dismissal or nonsuit of a hearing after the Disclosure Deadline has passed and, at any time within one year thereafter requests a subsequent hearing involving the same or substantially similar issues as those alleged in the original hearing, then, absent good cause or unless the parties agree otherwise, only evidence disclosed and witnesses identified by the Disclosure Deadline in the original hearing may be introduced at the subsequent hearing. *Amended to be effective March 1, 2017, 42 TexReg 760.*

TAC §89.1183. Resolution Process.

(a) Within 15 calendar days of receiving notice of the parent's request for a due process hearing, the public education agency must convene a resolution meeting with the parent and the relevant members of the admission, review, and dismissal committee who have specific knowledge of the facts identified in the request. The resolution meeting:
  (1) must include a representative of the public education agency who has decision-making authority on behalf of the public education agency; and
  (2) may not include an attorney of the public education agency unless the parent is accompanied by an attorney.

(b) The purpose of the resolution meeting is for the parent of the child to discuss the hearing issues and the facts that form the basis of the request for a hearing so that the public education agency has the opportunity to resolve the dispute.

(c) The resolution meeting described in subsections (a) and (b) of this section need not be held if:
  (1) the parent and the public education agency agree in writing to waive the meeting; or
  (2) the parent and the public education agency agree to use the mediation process described in §89.1193 of this title (relating to Special Education Mediation).

(d) The parent and the public education agency determine the relevant members of the admission, review, and dismissal committee to attend the resolution meeting.

(e) The parties may enter into a confidentiality agreement as part of their resolution agreement. There is nothing in this division, however, that requires the participants in a resolution meeting to keep the discussion confidential or make a confidentiality agreement a condition of a parent's participation in the resolution meeting.

(f) If the public education agency has not resolved the hearing issues to the satisfaction of the parent within 30 calendar days of the receipt of the request for a hearing, the hearing may occur.

(g) Except as provided in subsection (k) of this section, the timeline for issuing a final decision begins at the expiration of this 30-day resolution period.

(h) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding subsections (f) and (g) of this section, the failure of the parent filing a request for a hearing to participate in the resolution meeting delays the timelines for the resolution process and the hearing until the meeting is held.

(i) If the public education agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented in accordance with the procedures in 34 Code of Federal Regulations, §300.322(d)), the public education agency may at the conclusion of the 30-day resolution period, request that a hearing officer dismiss the parent's request for a hearing.

(j) If the public education agency fails to hold the resolution meeting within 15 calendar days of receiving the parent's request for a hearing or fails to participate in the resolution meeting, the parent may seek the intervention of the hearing officer to begin the hearing timeline.

(k) Notwithstanding subsections (f) and (g) of this section, the timeline for issuing a final decision starts the calendar day after one of the following events:
  (1) both parties agree in writing to waive the resolution meeting;
  (2) after either the mediation or resolution meeting starts but before the end of the 30-day resolution period, the parties agree in writing that no agreement is possible; or
  (3) if both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later the parent or public education agency withdraws from the mediation process.

(l) If a resolution to the dispute is reached at the resolution meeting, the parties must execute a legally binding agreement that is:
  (1) signed by both the parent and a representative of the public education agency who has the authority to bind the public education agency; and
  (2) enforceable in any state or federal court of competent jurisdiction.

(m) If the parties execute an agreement pursuant to subsection (l) of this section, a party may void the agreement within three business days of the agreement's execution. *Statutory Authority: amended to be effective March 1, 2017, 42 TexReg 760.*

http://tea.texas.gov/Academics/Special_Student_Populations/Special_Education/Dispute_Resolution/Special_Education_Dispute_Resolution_Processes/

TAC §89.1185. Hearing Procedures.

(a) The hearing officer must afford the parties an opportunity for hearing within the timelines set forth in 34 Code of Federal Regulations (CFR), §300.515 and §300.532, as applicable, unless the hearing officer, at the request of either party, grants an extension of time, except that the timelines for expedited hearings cannot be extended.

(b) Each hearing must be conducted at a time and place that are reasonably convenient to the parents and child involved.

(c) All persons in attendance must comport themselves with the same dignity, courtesy, and respect required by the district courts of the State of Texas. All argument must be made to the hearing officer alone.

(d) Except as modified or limited by the provisions of 34 CFR, §§300.507-300.514, or 300.532, or this division, the Texas Rules of Civil Procedure will govern the proceedings at the hearing and the Texas Rules of Evidence must govern evidentiary issues.

(e) Before a document may be offered or admitted into evidence, the document must be identified as an exhibit of the party offering the document. All pages within the exhibit must be numbered, and all personally identifiable information concerning any student who is not the subject of the hearing must be redacted from the exhibit.

(f) The hearing officer may set reasonable time limits for presenting evidence at the hearing.

(g) Upon request, the hearing officer, at his or her discretion, may permit testimony to be received by telephone.

(h) Granting of a motion to exclude witnesses from the hearing room will ~~shall~~ be at the hearing officer's discretion.

(i) Hearings conducted under this division must be closed to the public, unless the parent requests that the hearing be open.

(j) The hearing must be recorded and transcribed by a court reporter, who will promptly prepare and transmit a transcript of the evidence to the hearing officer with copies to each of the parties.

(k) Filing of post-hearing briefs will be permitted only upon order of the hearing officer.

(l) The hearing officer must issue a final decision, signed and dated, no later than 45 calendar days after the expiration of the 30-day resolution period under 34 CFR, §300.510(b), and §89.1183 of this title (relating to Resolution Process) or the adjusted time periods described in 34 CFR, §300.510(c), and §89.1183 of this title after a request for a due process hearing is received by the Texas Education Agency (TEA), unless the deadline for a final decision has been extended by the hearing officer as provided in §89.1186 of this title (relating to Extensions of Time). A final decision must be in writing and must include findings of fact and conclusions of law separately stated. Findings of fact must be based exclusively on the evidence presented at the hearing. The final decision must be mailed to each party by the hearing officer on the day that the decision is issued. The hearing officer, at his or her discretion, may render his or her decision following the conclusion of the hearing, to be followed by written findings of fact and written decision.

(m) At the request of either party, the hearing officer must include, in the final decision, specific findings of fact regarding the following issues:

(1) whether the parent or the public education agency unreasonably protracted the final resolution of the issues in controversy in the hearing; and

(2) if the parent was represented by an attorney, whether the parent's attorney provided the public education agency the appropriate information in the request for a hearing in accordance with 34 CFR, §300.508(b).

(n) The decision issued by the hearing officer is final, except that any party aggrieved by the findings and decision made by the hearing officer, or the performance thereof by any other party, may bring a civil action with respect to the issues presented at the hearing in any state court competent jurisdiction or in a district court of the United States, as provided in 34 CFR, §300.516.

(o) A public education agency must implement any decision of the hearing officer that is, at least in part, adverse to the public education agency within the timeframe prescribed by the hearing officer or, if there is no timeframe prescribed by the hearing officer or, within ten school days after the date the decision was rendered. In accordance with 34 CFR, §300.518(d), a public education agency must implement a hearing officer's decision during the pendency of an appeal, except that the public education agency may withhold reimbursement for past expenses ordered by the hearing officer.

(p) In accordance with 34 CFR, §300.152(c)(3), a parent may file a complaint with the TEA alleging that a public education agency has failed to implement a hearing officer's decision. *Amended to be effective March 1, 2017, 42 TexReg 760.*

TAC §89.1186. Extensions of Time.

(a) A hearing officer may grant extensions of time for good cause beyond the time period specified in §89.1185(l) of this title (relating to Hearing Procedures) at the request of either party. A hearing officer must not solicit extension requests, grant extensions on his or her own behalf, or unilaterally issue extensions for any reason. Any extension must be granted to a specific date, and the reason for the extension must be documented in a written order of the hearing officer and provided to each of the parties.

(b) A hearing officer may grant a request for an extension only after fully considering the cumulative impact of the following factors:
  (1) whether the delay will positively contribute to, or adversely affect, the child's educational interest or well-being;
  (2) the need of a party for additional time to prepare or present the party's position at the hearing;
  (3) any adverse financial or other detrimental consequences likely to be suffered by a party in the event of delay; and
  (4) whether there has already been a delay in the proceeding through the actions of one of the parties.
  Amended to be effective March 1, 2017, 42 TexReg 760.

TEC §29.016.Evaluation Conducted Pursuant to a Special Education Due Process Hearing.

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

TEC §29.0161. Contract with State Office of Administrative Hearings for Special Education Due Process Hearings.

Not later than December 1, 2003, the agency and the State Office of Administrative Hearings shall jointly determine whether it would be cost-effective for the agency to enter an interagency contract with the office under which the office would conduct all or part of the agency's special education due process hearings under 20 U.S.C. Section 1415 and its subsequent amendments.

TEC §29.0162 REPRESENTATION IN SPECIAL EDUCATION DUE PROCESS HEARING.

(a) A person in an impartial due process hearing brought under 20 U.S.C. Section 1415 may be represented by:
  (1) an attorney who is licensed in this state; or
  (2) an individual who is not an attorney licensed in this state but who has special knowledge or training with respect to problems of children with disabilities and who satisfies qualifications under Subsection (b).

(b) The commissioner by rule shall adopt additional qualifications and requirements for [required of] a representative for purposes of Subsection (a)(2). The rules must:
  (1) prohibit an individual from being a representative under Subsection (a)(2) opposing a school district if:
    (A) the individual has prior employment experience with the district; and
    (B) the district raises an objection to the individual serving as a representative; ~~[and]~~
  (2) include requirements that the representative have knowledge of:
    (A) special education due process rules, hearings, and procedure; and
    (B) federal and state special education laws;
  (3) require, if the representative receives monetary compensation from a person for representation in an impartial due process hearing, that the representative agree to abide by a voluntary code of ethics and professional conduct during the period of representation; and
  (4) require, if the representative receives monetary compensation from a person for representation in an impartial due process hearing, that the representative enter into a written agreement for representation with the person who is the subject of the special education due process hearing that includes a process for resolving any disputes between the representative and the person.

(c) A special education due process hearing officer shall determine whether an individual satisfies qualifications under Subsections (a)(2) and (b).

(d) The agency is not required to license or in any way other than as provided by Subsection (b) regulate representatives described by Subsection (a)(2) in a special education impartial due process hearing.

(e) The written agreement for representation required under Subsection (b)(4) is considered confidential and may not be disclosed.

SECTION 2. This Act applies beginning with the 2017-2018 school year.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

§300.513 Hearing decisions.

(a) Decision of hearing officer.

(1) Subject to paragraph (a)(2) of this section, a hearing officer's determination of whether a child received FAPE must be based on substantive grounds.

(2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies--

(i) Impeded the child's right to a FAPE;

(ii) Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child; or

(iii) Caused a deprivation of educational benefit.

(3) Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under §§300.500 through 300.536.

(b) Construction clause. Nothing in §§300.507 through 300.513 shall be construed to affect the right of a parent to file an appeal of the due process hearing decision with the SEA under §300.514(b), if a State level appeal is available.

(c) Separate request for a due process hearing. Nothing in §§300.500 through 300.536 shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

(d) Findings and decision to advisory panel and general public. The WCSESSA, after deleting any personally identifiable information, must--

(1) Transmit the findings and decisions referred to in §300.512(a)(5) to the State advisory panel established under §300.167; and

(2) Make those findings and decisions available to the public.

(Authority: 20 U.S.C. 1415(f)(3)(E) and (F), 1415(h)(4), 1415(o))

§300.514 Finality of decision; appeal; impartial review.

(a) Finality of hearing decision. A decision made in a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and §300.516.

(b) Appeal of decisions; impartial review.

(1) If the hearing required by §300.511 is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA.

(2) If there is an appeal, the SEA must conduct an impartial review of the findings and decision appealed. The official conducting the review must--

(i) Examine the entire hearing record;

(ii) Ensure that the procedures at the hearing were consistent with the requirements of due process;

(iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in §300.512 apply;

(iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;

(v) Make an independent decision on completion of the review; and

(vi) Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties.

(c) Findings and decision to advisory panel and general public. The SEA, after deleting any personally identifiable information, must--

(1) Transmit the findings and decisions referred to in paragraph (b)(2)(vi) of this section to the State advisory panel established under §300.167; and

(2) Make those findings and decisions available to the public.

(d) Finality of review decision. The decision made by the reviewing official is final unless a party brings a civil action under §300.516.

(Authority: 20 U.S.C. 1415(g) and (h)(4), 1415(i)(1)(A), 1415(i)(2))

§300.515 Timelines and convenience of hearings and reviews.

(a) The WCSESSA must ensure that not later than 45 days after the expiration of the 30 day period under §300.510(b), or the adjusted time periods described in 300.510(c)--
(1) A final decision is reached in the hearing; and
(2) A copy of the decision is mailed to each of the parties.

(b) The SEA must ensure that not later than 30 days after the receipt of a request for a review--
(1) A final decision is reached in the review; and
(2) A copy of the decision is mailed to each of the parties.

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.
(Authority: 20 U.S.C. 1415(f)(1)(B)(ii), 1415(g), 1415(i)(1))

TAC §89.1191. Special Rule for Expedited Due Process Hearings.

A parent who disagrees with any decision regarding a child's placement under 34 Code of Federal Regulations (CFR), §300.530 and §300.531, or a manifestation determination under 34 CFR, §300.530(e), or a school district that believes that maintaining the current placement of a child is substantially likely to result in injury to the child or others, may appeal the decision by requesting an expedited due process hearing under 34 CFR, §300.532. An expedited due process hearing will be governed by the same procedural rules as are applicable to due process hearings generally, except that:

(1) the hearing must occur within 20 school days of the date the request for a due process hearing is filed;

(2) the hearing officer must make a decision within 10 school days after the hearing;

(3) unless the parents and the school district agree in writing to waive the resolution meeting required by 34 CFR, §300.532(c)(3)(i), or to use the mediation process described in 34 CFR, §300.506, the resolution meeting must occur within seven calendar days of the receipt of the request for a hearing;

(4) the hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of the receipt of the request for a hearing;

(5) the hearing officer must not grant any extensions of time or grant permission for the hearing to proceed under the timelines that apply to hearings involving non-disciplinary matters; and

(6) the provisions in 34 CFR, §300.508(d), do not apply. *Amended to be effective March 1, 2017, 42 TexReg 760.*

§300.517 Attorneys' fees.

(a) In general.
(1) In any action or proceeding brought under section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to--
(i) The prevailing party who is the parent of a child with a disability;
(ii) To a prevailing party who is an SEA or LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
(iii) To a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.
(2) Nothing in this subsection shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.

(b) Prohibition on use of funds.
(1) Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under section 615 of the Act and subpart E of this part.
(2) Paragraph (b)(1) of this section does not preclude WCSESSA from using funds under Part B of the Act for conducting an action or proceeding under section 615 of the Act.

(c) Award of fees. A court awards reasonable attorneys' fees under section 615(i)(3) of the Act consistent with the following:
(1) Fees awarded under section 615(i)(3) of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph.

(2) (i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent if--

(A) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

(B) The offer is not accepted within 10 days; and

(C) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(ii) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation described in §300.506.

(iii) A meeting conducted pursuant to §300.510 shall not be considered--

(A) A meeting convened as a result of an administrative hearing or judicial action; or

(B) An administrative hearing or judicial action for purposes of this section.

(3) Notwithstanding paragraph (c)(2) of this section, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(4) Except as provided in paragraph (c)(5) of this section, the court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the Act, if the court finds that--

(i) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(ii) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(iii) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(iv) The attorney representing the parent did not provide to the WCSESSA the appropriate information in the due process request notice in accordance with §300.508.

(5) The provisions of paragraph (c)(4) of this section do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the Act.

(Authority: 20 U.S.C. 1415(i)(3)(B)–(G))

TAC §89.1192 Attorneys' Fees.

In an action or proceeding brought under this division, a court, in its discretion, may award reasonable attorneys' fees to the prevailing party under the circumstances described in 34 Code of Federal Regulations. §300.517. *The provisions of this §89.1192 adopted to be effective March 1, 2017, 42 TexReg 760.*

XI. CIVIL ACTION

§300.516 Civil action.

(a) General. Any party aggrieved by the findings and decision made under §§300.507 through 300.513 or §§300.530 through 300.534 who does not have the right to an appeal under §300.514(b), and any party aggrieved by the findings and decision under §300.514(b), has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under §300.507 or §§300.530 through 300.532. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(b) Time limitation. The party bringing the action shall have 90 days from the date of the decision of the hearing officer or if applicable, the decision of the State review official, to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under Part B of the Act, in the time allowed by that State law.

(c) Additional requirements. In any action brought under paragraph (a) of this section, the court—

(1) Receives the records of the administrative proceedings;

(2) Hears additional evidence at the request of a party; and

(3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(d) Jurisdiction of district courts. The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy.

(e) Rule of construction. Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act, the procedures under §§300.507 and 300.514 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.

XII. STUDENT STATUS DURING PROCEEDINGS

§300.518 Child's status during proceedings.

(a) Except as provided in §300.533, during the pendency of any administrative or judicial proceeding regarding a request for a due process complaint notice requesting a due process hearing under §300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

(c) If the complaint involves an application for initial services under this part from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has turned three, the WCSESSA is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under §300.300(b), then the WCSESSA must provide those special education and related services that are not in dispute between the parent and the WCSESSA.

(d) If the hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State or local agency and the parents for purposes of paragraph (a) of this section.

(Authority: 20 U.S.C. 1415(j))

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Section 8 - ADMINISTRATION

I. SCOPE AND APPLICABILITY

§300.1 Purposes.
The purposes of this part are--
(a) To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;
(b) To ensure that the rights of children with disabilities and their parents are protected;
(c) To assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities; and
(d) To assess and ensure the effectiveness of efforts to educate children with disabilities.
(Authority: 20 U.S.C. 1400(d))

TAC §89.1001. Scope and Applicability.
(a) Special education services shall be provided to eligible students in accordance with all applicable federal law and regulations, state statutes, rules of the State Board of Education (SBOE) and commissioner of education, and the State Plan under Part B of the Individuals with Disabilities Education Act (IDEA).
(b) Education programs, under the direction and control of the Texas Youth Commission, Texas School for the Blind and Visually Impaired, Texas School for the Deaf, and schools within the Texas Department of Criminal Justice shall comply with state and federal law and regulations concerning the delivery of special education and related services to eligible students and shall be monitored by the Texas Education Agency in accordance with the requirements identified in subsection (a) of this section.
(c) A school district having a residential facility that is licensed by appropriate state agencies and located within the 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, the district determines that educational services are provided through a charter school, approved non-public school, or a facility operated private school, the district is not required to provide services. However, the district shall annually contact the facility to offer services to eligible students with disabilities.

§300.212 Public information.
The WCSESSA must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the agency under Part B of the Act.
(Authority: 20 U.S.C. 1413(a)(8))

II. FAPE – FREE APPROPRIATE PUBLIC EDUCATION

§300.17 Free appropriate public education. Free appropriate public education or FAPE means special education and related services that--

(a) Are provided at public expense, under public supervision and direction, and without charge;

(b) Meet the standards of the SEA, including the requirements of this part;

(c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and

(d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.320 through 300.324. (Authority: 20 U.S.C. 1401(9))

§300.101 Free appropriate public education (FAPE).

(a) General. A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in §300.530(d).

(b) FAPE for children beginning at age 3.

(1) Each State must ensure that--

(i) The obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday; and

(ii) An IEP or an IFSP is in effect for the child by that date, in accordance with §300.323(b).

(2) If a child's third birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP or IFSP will begin.

(c) Children advancing from grade to grade.

(1) Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.

(2) The determination that a child described in paragraph (a) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations.

(Authority: 20 U.S.C. 1412(a)(1)(A))

§300.102 Limitation--exception to FAPE for certain ages.

(a) General. The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:

(1) Children aged 3, 4, 5, 18, 19, 20, or 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children of those ages.

(2) (i) Children aged 18 through 21 to the extent that State law does not require that special education and related services under Part B of the Act be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility--

(A) Were not actually identified as being a child with a disability under §300.8; and

(B) Did not have an IEP under Part B of the Act.

(ii) The exception in paragraph (a)(2)(i) of this section does not apply to children with disabilities, aged 18 through 21, who --

(A) Had been identified as a child with a disability under §300.8 and had received services in accordance with an IEP, but who left school prior to their incarceration; or

(B) Did not have an IEP in their last educational setting, but who had actually been identified as a child with a disability under §300.8.

(3) (i) Children with disabilities who have graduated from high school with a regular high school diploma.

(ii) The exception in paragraph (a)(3)(i) of this section does not apply to students who have graduated but have not been awarded a regular high school diploma.

(iii) Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with §300.503.

(iv) As used in paragraphs (a)(3)(i) through (iii) of this section, the term regular high school diploma means the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards, or a higher diploma, except that a regular high school diploma shall not be aligned to the alternate academic achievement standards described in section 1111(b)(1)(E) of the ESEA. A regular high school diploma does not include a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential.

(4) Children with disabilities who are eligible under subpart H of this part, but who receive early intervention services under Part C of the Act.

(b) Documents relating to exceptions. The State must assure that the information it has provided to the Secretary regarding the exceptions in paragraph (a) of this section, as required by §300.700 (for purposes of making grants to States under this part), is current and accurate. (Authority: 20 U.S.C. 1412(a)(1)(B)-(C))

§300.103 FAPE – methods and payments.

(a) Each State may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of this part. For example, if it is necessary to place a child with a disability in a residential facility, a State could use joint agreements between the agencies involved for sharing the cost of that placement.

(b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for service provided to a child with a disability.

(c) Consistent with 300.323(c), the State must ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined. (Authority: 20 U.S.C. 1401(8), 1412(a)(1))

On March 22, 2017, the US Supreme Court decided a case regarding FAPE-Free Appropriate Public Education (the first one since Rowley v. Board of Education). The ruling in its entirety can be found: https://www.supremecourt.gov/opinions/16pdf/15-827_0pm1.pdf

In Texas the 5th Circuit Court standard was set in the hearing of Cypress Fairbanks ISD v. Michael F. in July 1997 with the following four part test (and is consistent with this US Supreme Court standard):
(1) The IEP is individualized based on performance and assessment;
(2) The placement is 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 non-academic benfits are demonstrated.

The development of each IEP is highly "individualized" with goals and objectives designed to be "appropriately ambitious" and challenging. Also, the IEP is "reasonably calculated" to enable the child to make progress appropriate in light of his/her circumstances. Our ARD members follow the 4 part test in developing students' IEPs. Our teachers are provided training opportunities annually through the ESC or locally to improve skills in this area. The measurement of a FAPE (Free Appropriate Public Education) is also individualized. In the 2017 ruling, the SCOTUS noted that Federal law requires States to "educate a wide spectrum" of children with disabilities and "the benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable by children at the other end," and SCOTUS declined "to establish any one test for determining the adequacy of educational benefits conferred upon all children covered by the Federal Act."

§300.109 Full educational opportunity goal (FEOG).

The State must have in effect policies and procedures to demonstrate that the State has established a goal of providing full educational opportunity to all children with disabilities, aged birth through 21, and a detailed timetable for accomplishing that goal. (Authority: 20 U.S.C. 1412(a)(2))

TEC §1.002. Equal Educational Services or Opportunities.

(a) An educational institution undertaking to provide education, services, or activities to any individual within the jurisdiction or geographical boundaries of the educational institution shall provide equal opportunities to all individuals within its jurisdiction or geographical boundaries pursuant to this code.

(b) An educational institution may not deny services to any individual eligible to participate in a school district's special education program as provided by Section 29.003, but the educational institution shall provide individuals with disabilities special educational services as authorized by law or, where expressly authorized,

assist in and contribute toward the provision of appropriate special educational services in cooperation with other educational institutions and other appropriate agencies, institutions, or departments.

§300.110 Program options.

The State must ensure that each public agency takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

III. SPECIAL EDUCATION DEFINED

§300.39 Special education.

(a) General.

(1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including--

(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(ii) Instruction in physical education.

(2) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section--

(i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;

(ii) Travel training; and

(iii) Vocational education.

(b) Individual special education terms defined. The terms in this definition are defined as follows:

(1) At no cost means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

(2) Physical education means--

(i) The development of--

(A) Physical and motor fitness;

(B) Fundamental motor skills and patterns; and

(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and

(ii) Includes special physical education, adapted physical education, movement education, and motor development.

(3) Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction--

(i) To address the unique needs of the child that result from the child's disability; and

(ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the WCSESSA that apply to all children.

(4) Travel training means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to--

(i) Develop an awareness of the environment in which they live; and

(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

(5) Vocational education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

(6) Vocational and technical education means organized educational activities that--

(i) Offer a sequence of courses that--

(A) Provides individuals with the rigorous and challenging academic and technical knowledge and skills the individuals need to prepare for further education and for careers (other than careers requiring a Master's or doctoral degree) in current or emerging employment sectors;

(B) May include the provision of skills or courses necessary to enroll in a sequence of courses that meet the requirements of this subparagraph; and

(C) Provides, at the postsecondary level, for a 1- year certificate, an associate degree, or industry-recognized credential; and

(ii) Include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills, or an individual. (Authority: 20 U.S.C.1401(29))

§300.34 Related Services *(located in Section 4 of this manual)*

§300.42 Supplementary aids and services. Supplementary aids and services means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§300.112 through 300.116. *This would include any assistive technology devices and services determined by the IEP committee that the child needs to receive FAPE – free appropriate public education.*

(37) SCIENTIFICALLY BASED RESEARCH- The term scientifically based research —

(A) means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and

(B) includes research that —

(i) employs systematic, empirical methods that draw on observation or experiment;

(ii) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(iii) relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

(iv) is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

(v) ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

(vi) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

IV. PERSONNEL

§300.156 Personnel qualifications.

(a) General. The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained , including that those personnel have the content knowledge and skills to serve children with disabilities.

(b) Related services personnel and paraprofessionals. The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that--

(1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and

(2) Ensure that related services personnel who deliver services in their discipline or profession--

(i) Meet the requirements of paragraph (b)(1) of this section; and

(ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) A llow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.

(c) Qualifications for special education teachers.

(1) The qualifications described in paragraph (a) of this section must ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school - is highly qualified as a special education teacher by the deadline established in section 1119(a)(2) of the ESEA.

(i) Has obtained full State certification as a special education teacher (including certification obtained through an alternate route to certification as a special educator, if such alternate route meets minimum requirements described in 34 CFR 200.56(a)(2)(ii) as such section was in effect on November 28, 2008), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, the teacher must meet the certification or licensing requirements, if any, set forth in the State's public charter school law;

(ii) Has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) Holds at least a bachelor's degree.

(2) A teacher will be considered to meet the standard in paragraph (c)(1)(i) of this section if that teacher is participating in an alternate route to special education certification program under which—

(i) The teacher—

(A) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;

(B) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

(C) Assumes functions as a teacher only for a specified period of time not to exceed three years; and

(D) Demonstrates satisfactory progress toward full certification as prescribed by the State; and

(ii) The State ensures, through its certification and licensure process, that the provisions in paragraph (c)(2)(i) of this section are met.

(d) Policy. In implementing this section, a State must adopt a policy that includes a requirement that LEAs in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel who meet the applicable requirements described in paragraph (c) of this section to provide special education and related services under this part to children with disabilities.

(e) Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular SEA or LEA employee to be highly qualified meet the applicable requirements described in paragraph (c) of this section, or to

prevent a parent from filing a complaint about staff qualifications with the SEA as provided for under this part. (Authority: 20 U.S.C. 1412(a)(14)) [71 FR 46753, Aug. 14, 2006, as amended at 82 FR 29759, June 30, 2017]

TEC §21.002. Teacher Employment Contracts.

(a) A school district shall employ each classroom teacher, principal, librarian, nurse, or counselor under:
  (1) a probationary contract, as provided by Subchapter C;
  (2) a continuing contract, as provided by Subchapter D; or
  (3) a term contract, as provided by Subchapter E.

(b) A district is not required to employ a person other than an employee listed in Subsection (a) under a probationary, continuing, or term contract.

(c) Each board of trustees shall establish a policy designating specific positions of employment, or categories of positions based on considerations such as length of service, to which continuing contracts or term contracts apply.

TEC §21.003. Certification Required.

(a) A person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, or counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by Subchapter B.

(b) A person may not be employed by a school district as an audiologist, occupational therapist, physical therapist, physician, nurse, school psychologist, associate school psychologist, social worker, or speech language pathologist unless the person is licensed by the state agency that licenses that profession and may perform specific services within those professions for a school district only if the person holds the appropriate credential from the appropriate state agency. As long as a person employed by a district before September 1, 2011, to perform marriage and family therapy, as defined by Section 502.002, Occupations Code, is employed by the same district, the person is not required to hold a license as a marriage and family therapist to perform marriage and family therapy with that district.

Texas Requirements for Public School Personnel Assignments:
https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=19&pt=7&ch=231. Also see:
http://ritter.tea.state.tx.us/sbecrules/tac/chapter231/

TAC §89.1131. Qualifications of Special Education, Related Service, and Paraprofessional Personnel.

(a) All special education and related service personnel must be certified, endorsed, or licensed in the area or areas of assignment in accordance with 34 Code of Federal Regulations, §300.156;the Texas Education Code, §§21.002, 21.003, and 29.304; or appropriate state agency credentials.

(b) A teacher who holds a special education certificate or an endorsement may be assigned to any level of a basic special education instructional program serving eligible students 3-21 years of age, as defined in §89.1035(a) of this title (relating to Age Ranges for Student Eligibility), in accordance with the limitation of their certification, except for the following.
  (1) Persons assigned to provide speech therapy instructional services must hold a valid Texas Education Agency certificate in speech and hearing therapy or speech and language therapy, or a valid state license as a speech/language pathologist.
  (2) Teachers holding only a special education endorsement for early childhood education for students with disabilities must be assigned only to programs serving infants through Grade 6.
  (3) Teachers certified in the education of students with visual impairments must be available to students with visual impairments, including deaf-blindness, through one of the school district's instructional options, a shared services arrangement with other school districts, or an education service center.
  (4) Teachers certified in the education of students with auditory impairments must be available to students with auditory impairments, including deaf-blindness, through one of the school district's instructional options, a regional day school program for the deaf, or a shared services arrangement with other school districts.
  (5) The following provisions apply to physical education.
    (A) When the admission, review, and dismissal committee has made the determination and the arrangements are specified in the student's individualized education program, physical education may be provided by the following personnel:
      (i) special education instructional or related service personnel who have the necessary skills and knowledge;

(ii) physical education teachers;
(iii) occupational therapists;
(iv) physical therapists; or
(v) occupational therapy assistants or physical therapy assistants working under supervision in accordance with the standards of their profession.

(B) When these services are provided by special education personnel, the district must document that they have the necessary skills and knowledge. Documentation may include, but need not be limited to, inservice records, evidence of attendance at seminars or workshops, or transcripts of college courses.

(6) Teachers assigned full-time or part-time to instruction of students from birth through age two with visual impairments, including deaf-blindness, must be certified in the education of students with visual impairments. Teachers assigned full-time or part-time to instruction of students from birth through age two who are deaf, including deaf-blindness, must be certified in education for students who are deaf and severely hard of hearing.

(7) Teachers with secondary certification with the generic delivery system may be assigned to teach Grades 6-12 only.

(c) Paraprofessional personnel must be certified and may be assigned to work with eligible students, general and special education teachers, and related service personnel. Educational aides may also be assigned to assist students with special education transportation, serve as a job coach, or serve in support of community-based instruction. Educational aides paid from state administrative funds may be assigned to special education clerical or administrative duties.

(d) Interpreting services for students who are deaf must be provided by an interpreter who is certified in the appropriate language mode(s), if certification in such mode(s) is available. If certification is available, the interpreter must be a certified member of or certified by the Registry of Interpreters for the Deaf (RID) or the Texas Board for Evaluation of Interpreters (BEI), Department of Assistive and Rehabilitative Services (DARS), Office for Deaf and Hard of Hearing Services (DHHS).

(e) Orientation and mobility instruction must be provided by a certified orientation and mobility specialist (COMS) who is certified by the Academy for Certification of Vision Rehabilitation and Education Professionals.

TAC §231.611. Special Education Teacher.

(a) Subject to the requirements in subsection (c) of this section, an assignment for Special Education Teacher is allowed with one of the following certificates. If an individual is providing content instruction in a special education classroom setting, a valid certificate that matches the subject and grade level of the assignment is also required, or the individual must demonstrate competency through the state's 2010 and 2011 high objective uniform State standard of evaluation for elementary and secondary special education teachers.
(1) Blind School (Texas State School for the Blind and Visually Impaired only).
(2) Deaf and Severely Hard of Hearing.
(3) Deaf School (Texas State School for the Deaf only).
(4) Deaf-Blind.
(5) Deficient Vision.
(6) Early Childhood Education for Handicapped Children (Infants-Grade 6 only).
(7) Elementary Generic Special Education.
(8) Emotionally Disturbed.
(9) Generic Special Education.
(10) Hearing Impaired.
(11) High School--Generic Special Education.
(12) Language and/or Learning Disabilities.
(13) Mentally Retarded.
(14) Physically Handicapped.
(15) School Speech-Language Pathologist.
(16) Secondary Generic Special Education (Grades 6-12) (Grades 6-12 only).
(17) Severely and Profoundly Handicapped.
(18) Severely Emotionally Disturbed and Autistic.
(19) Special Education Supplemental (Valid at grade level and subject area of the base certificate).
(20) Special Education: Early Childhood-Grade 12.
(21) Speech and Hearing Therapy.
(22) Speech and Language Therapy.
(23) Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12.

(24) Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12.
(25) Visually Handicapped.

(b) The certificates specified in subsection (a) of this section are appropriate for a special education assignment in Prekindergarten-Grade 12 except where otherwise noted.

(c) The employing school district should make every effort to secure educators trained in the specialized skills and knowledge needed to serve the special needs of the children. If a staff member does not have the skills and knowledge needed for the assignment, the school district is responsible for making provisions for the person to acquire the necessary skills and knowledge.

TAC §230.31. Types of Certificates.

(d) Effective September 1, 2017, the educational aide certificate shall be valid for two years. Educational aide certificates issued effective September 1, 2017, will expire at the end of the two-year validity period. Individuals issued an educational aide certificate prior to September 1, 2017, as well as new applicants for the educational aide certificate, will be required to reapply for certification every two years and meet any other requirements for the educational aide certificate as specified in §230.65 of this title (relating to Requirements for Reissuance of Educational Aide Certificates).
http://ritter.tea.state.tx.us/sbecrules/tac/chapter230/index.html

TAC §231.615. Full-Time Teacher of Orthopedically Impaired or Other Health Impaired in a Hospital Class or Home-Bound Instruction

An assignment for Full-Time Teacher of Orthopedically Impaired or Other Health Impaired in a Hospital Class or Home-Bound Instruction is allowed with one of the following certificates.

(1) Special education certificate as specified in §231.611 of this title (relating to Special Education Teacher).
(2) Teacher certificate. This assignment requires a three semester credit hour survey course in special education and three semester credit hour course related to teaching students who are physically impaired or health impaired.

Texas Administrative Code

TAC §231.613 Teacher of Adaptive Physical Education

(a) An assignment for Teacher of Adaptive Physical Education is allowed with one of the following certificates.
(1) All-Level Health and Physical Education.
(2) All-Level Physical Education.
(3) Elementary Physical Education (Grades 1-8) (Grades 1-8 only).
(4) Grades 6-8--Physical Education (Grades 6-8 only).
(5) Physical Education: Early Childhood-Grade 12.
(6) Secondary Physical Education (Grades 6-12) (Grades 6-12 only).
(7) Special education certificate as specified in §231.611 of this title (relating to Special Education Teacher). This assignment requires necessary skills and knowledge in adaptive physical education. Evidence of necessary skills and knowledge in adaptive physical education must be documented through in-service records, seminar attendance records, or transcripts of college courses.

(b) Other licensed professionals may be eligible to provide adaptive physical education services to students with disabilities under the scope of practice of the specific license held.

TAC §231.623. Special Education Counseling Services; Educational Diagnostician; Speech Therapy Services; an Vocational Adjustment Coordinator

(a) Special Education Counseling Services.
(1) An assignment for Special Education Counseling Services is allowed with one of the following certificates.
(A) Counselor
(B) School Counselor (Early Childhood-Grade 12)
(C) Special Education Counselor
(D) Special Education Visiting Teacher
(E) Vocational Counselor
(2) Individuals certified or licensed to practice in other professions may be eligible to provide counseling services for students with disabilities under the scope of practice of the specific license held.

(b) Educational Diagnostician.
(1) An assignment for Educational Diagnostician is allowed with an Educational Diagnostician certificate.

(2) Individuals certified or licensed to practice in other professions may be eligible to provide evaluative services for students with disabilities under the scope of practice of the specific license held. New certification requirements for applicants admitted to an educator preparation program for Educational Diagnostician Certification on or after September 1, 2018, see TAC §§239.80-239.86 at this link: http://ritter.tea.state.tx.us/sbecrules/tac/chapter239/ch239c.html

(c) Speech Therapy Services.

(1) An assignment for Speech Therapy Services is allowed with one of the following certificates.

(A) School Speech-Language Pathologist.

(B) Speech and Hearing Therapy.

(C) Speech and Language Therapy.

(2) Individuals licensed by the State Board of Examiners for Speech Language Pathology and Audiology also may provide speech therapy services to eligible students under the scope of practice of the specific license held.

(d) Vocational Adjustment Coordinator.

(1) An assignment for Vocational Adjustment Coordinator is allowed with a Special Education certificate. This assignment requires 60 clock-hours of training appropriate for the assignment.

(2) A teacher in an assignment for Vocational Adjustment Coordinator will have three years from the date of assignment to complete the required training.

§231.617. Teacher of Students with Visual Impairments

(a) An assignment for Teacher of Students with Visual Impairments is allowed with one of the following certificates.

(1) Deficient Vision.

(2) Visually Handicapped.

(1) Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12.

(b) A teacher in an assignment for Teacher of Students with Visual Impairment must be available to students with visual impairments.

§231.619. Teacher of Students with Auditory Impairments

(a) An assignment for Teacher of Students with Auditory Impairments is allowed with one of the following certificates.

(1) Deaf and Severely Hard of Hearing.

(2) Hearing Impaired.

(3) Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12.

(b) A teacher in an assignment for Teacher of Students with Auditory Impairments must be available to students with auditory impairments.

(c) A teacher in an assignment for Teacher of Students with Auditory Impairments is not required to pass the Texas Assessment of Sign Communication (TASC) or the Texas Assessment of Sign Communication-American Sign Language (TASC-ASL) in order to be assigned to a classroom in which another communication method is used predominately. If this teacher completes certification requirements through a State Board for Educator Certification-approved educator preparation program in Texas, the program must have assessed proficiency in the communication method and verified it to be at an appropriate level. *Source Note: The provisions of this §231.619 adopted to be effective August 15, 2013, 38 TexReg 5076.*

TAC §231.645. Professional Support Personnel Requiring Other Professional License

A person may not be employed by a school district to perform services within the following professions unless the person holds the appropriate credential or license from the appropriate state agency for that profession. Educator certification is not required for a school district assignment to provide services that are within the scope of that profession.

(1) Assosicate School Psychologist.

(2) Audiologist.

(3) Licensed Professional Counselor

(4) Marriage and Family Therapist. As long as a person was employed by a school district before September 1, 2011, to perform marriage and family therapy, as defined by the Texas Occupations Code (TOC), §502.002, and remains employed by the same school district, the person is not required to hold a license as a marriage and family therapist to perform marriage and family therapy with that school district.

(5) Nurse.

(6) Occupational Therapist.

(7) Physical Therapist.
(8) Physician.
(9) School Psychologist.
(10) Social Worker.
(11) Speech Language Pathologist. An assignment to provide Speech Therapy Services is allowed with a certificate authorized by the TOC, §401.054.

Source Note: The provisions of this §231.64 adopted to be effective May 18, 2014, 39 TexReg 3707.

TEC §29.304. Qualifications of Personnel

(a) A student who is **deaf or hard of hearing** must have an education in which teachers, psychologists, speech therapists, progress assessors, administrators, and others involved in education understand the unique nature of deafness and the hard-of-hearing condition. A teacher of students who are deaf or hard of hearing either must be proficient in appropriate language modes or use an interpreter certified in appropriate language modes if certification is available.
(b) Each school district shall employ or provide access to appropriate qualified staff with proficient communications skills, consistent with credentialing requirements, to fulfill the responsibilities of the school district, and shall make positive efforts to employ qualified individuals with disabilities.
(c) Regular and special personnel who work with students who are deaf or hard of hearing must be adequately prepared to provide educational instruction and services to those students.

TEC §21.0485. Certification to Teach Students with Visual Impairments.

(a) To be eligible to be issued a certificate to teach students with visual impairments, a person must:
(1) complete either:
(A) all course work required for that certification in an approved educator preparation program; or
(B) an alternative educator certification program approved for the purpose by the board;
(2) perform satisfactorily on each examination prescribed under Section 21.048 for certification to teach students with visual impairments, after completing the course work or program described by Subdivision (1); and
(3) satisfy any other requirements prescribed by the board.
(b) Subsection (a) does not apply to eligibility for a certificate to teach students with visual impairments, including eligibility for renewal of that certificate, if the application for the initial certificate was submitted on or before September 1, 2011.

Based on the December 10, 2015, passage of the ESSA (Every Student Succeeds Act), http://www.ed.gov/essa, schools are no longer required to comply with the HQ regulations effective 2016-2017 school year. All elements of ESSA go into effect 2017-18 school year. TEA Commissioner letter: http://tea.texas.gov/About_TEA/News_and_Multimedia/Correspondence/TAA_Letters/Every_Student_Succeeds_Act/

TEC §21.005. High-Quality Teachers

The commissioner may by rule establish a statewide standard to be used to certify each school district that is preparing, training, and recruiting high-quality teachers in a manner consistent with the No Child Left Behind Act of 2001 (Pub. L. No. 107-110).

§300.207 Personnel development.

The LEA must ensure that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared, subject to the requirements of §300.156 (related to personnel qualifications) and section 2122 of the ESEA.

TEC §21.451 Staff Development Requirements.

(d) The staff development:
(1) may include training in:
(A) technology;
(B) conflict resolution;
(C) discipline strategies, including classroom management, district discipline policies, and the student code of conduct adopted under Section 37.001 and Chapter 37; and
(D) preventing, identifying, responding to, and reporting incidents of bullying; and

(2) subject to Subsection (e), must include training based on scientifically based research, as defined by Section 9101, No Child Left Behind Act of 2001 (20 U.S.C. Section 7801), that:
(A) relates to instruction of students with disabilities; and
(B) is designed for educators who work primarily outside the area of special education; and
(3) must include suicide prevention training that must be provided:
(A) on an annual basis, as part of a new employee orientation, to all new school district and open-enrollment charter school educators; and
(B) to existing school district and open-enrollment charter school educators on a schedule adopted by the agency by rule.

(d-1) The suicide prevention training required by Subsection (d)(3) must use a best practice-based program recommended by the Department of State Health Services in coordination with the agency under Section 161.325, Health and Safety Code.

(d-2) The suicide prevention training required by Subsection (d)(3) may be satisfied through independent review of suicide prevention training material that:
(1) complies with the guidelines developed by the agency; and
(2) is offered online.

(e) A school district is required to provide the training described by Subsection (d)(2) to an educator who works primarily outside the area of special education only if the educator does not possess the knowledge and skills necessary to implement the individualized education program developed for a student receiving instruction from the educator. A district may determine the time and place at which the training is delivered.

(f) In developing or maintaining the training required by Subsection (d)(2), a school district must consult with persons with expertise in research-based practices for students with disabilities. Persons who may be consulted under this subsection include colleges, universities, private and nonprofit organizations, regional education service centers, qualified district personnel, and any other persons identified as qualified by the district. This subsection applies to all training required by Subsection (d)(2), regardless of whether the training is provided at the campus or district level.

*The WCSESSA will annually provide campus based **training** on implementation of the IEP. Annually the campus Principal will inform the Special Education Director of any request for training that cannot be performed by assigned district special education personnel. Documentation of training will be maintained by the campus principal including:*

a. Agenda with date and
b. Attendance list
c. Specialized training required by specific staff for a specific student will be handled individually and documented in the personnel file.

Teachers in the WCSESSA have access to numerous training opportunities both inside the school district as well as at the Education Service Centers. As part of the decentralized function for Texas, Region 20 ESC is assigned to organize and conduct professional development (iLearning) that will facilitate access to the general curriculum. Three modules include: Early Childhood, Elementary and Secondary. They offer specific trainings and support to assist teachers and administrators with strategies and methods to ensure students with disabilities are not only provided access to the general curriculum, but are making academic progress. Specific training topics include (but are not limited to): Inclusion, Accommodations &Modifications, Co-Teaching, Differentiated Instruction &Brain Based Learning Strategies, and State Assessments.
http://portal.esc20.net/portal/page/portal/esc20public/SpecialEducation/AGCHome

TEC §37.0181 Professional Development Regarding Disciplinary Procedures.

(a) Each principal or other appropriate administrator who oversees student discipline shall, at least once every three school years, attend professional development training regarding this subchapter, including training relating to the distinction between a discipline management technique used at the principal's discretion under Section 37.002(a) and the discretionary authority of a teacher to remove a disruptive student under Section 37.002(b).

(b) Professional development training under this section may be provided in coordination with regional education service centers through the use of distance learning methods, such as telecommunications networks, and using available agency resources.

For professional development training resources (in addition to our ESC) see the following link:
http://www.txbehaviorsupport.org/

V. CURRICULUM FOR STUDENTS WITH DISABILITIES

Click link to review the Region 20 ESC Access to General Curriculum Statewide Function which TEA supports.
http://www.esc20.net/default.aspx?name=ci_se.agc.Home

The Wood County SSA has the responsibility for providing educational and related services to eligible students in the least restrictive environment. Students with disabilities shall have the opportunity to participate in educational programs and activities with non-disabled students to the maximum extent appropriate.
The WCSESSA curriculum will enable each student to acquire knowledge and skills in the basic areas of learning commensurate with the student's needs and abilities. These skills may be attained in the general program of instruction or in a program of special education instruction, as determined by the Admission, Review, and Dismissal committee.

All students, regardless of special need or condition, will be provided a well-balanced curriculum. The Texas state standards are found in the TEKS – Texas Essential Knowledge and Skills. The TEKS represent core knowledge, skills, and competencies students should learn. Students with special needs shall be instructed in those same TEKS in a manner appropriate to their needs. The TEKS constitute a sound developmental sequence of instruction and their mastery should be the goal for all students, including students with disabilities. Although some students with disabilities will have different learning rates or different levels of mastery, the WCSESSA must provide each student with disabilities the opportunity to make satisfactory progress in the essential knowledge and skills in a manner appropriate to the student's needs. If a student's disability is such that mastery of some or all of the TEKS is inappropriate for that student, the ARD/IEP committee has the responsibility to develop an appropriate scope and sequence of skills for that student and to modify/accommodate the method of instruction, pacing, and/or materials, as appropriate, to provide full opportunity for learning the TEKS.

- *Identified special education students will follow the general education curriculum, consisting of the essential elements, when deemed appropriate by the ARD/IEP committee and reflected in the IEP.*
- *Identified special education students will follow the general education curriculum with modification and/or special education support when deemed appropriate by the ARD/IEP committee and reflected in the IEP. Each identified special education student shall follow the IEP developed and approved by the ARD/IEP committee.*

Tutorials *- Students in special education programs will be eligible for tutorial services, but the tutorials will not replace other special services provided for the student.*
Textbooks *- State-adopted textbooks are available for identified students with disabilities' use, regardless of placement. State-adopted textbooks may be requested by the teacher of the student with disabilities, following local building procedures. Local WCSESSA guidelines will be followed when textbooks are issued to identified students with disabilities. Students are responsible for the proper handling and return of a state-adopted textbook, which has been issued to the student. Consequences for improper use or return of a textbook will comply with local district procedures for all students.*

- *A special education teacher may request teacher's manuals and other supplementary aids for state-adopted textbooks used by the identified students with disabilities assigned to the special education teacher. Local procedures for textbook acquisition will be followed in requesting teacher's manuals and aids.*
- *Textbooks on Tape - The WCSESSA makes available certain state-adopted textbooks and selected other books on tape for students with disabilities based on ARD/IEP committee recommendation.*
- *Original sets of tapes are maintained in Content Mastery Centers.*

Scientifically Research Based Interventions/Strategies

- *Based on IDEA 2004, the IEP now requires a statement of the 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, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided.*
- *Also based on IDEA 2004, prior to, or as a part of the referral process, the child must have been provided appropriate high-quality, research-based instruction in regular education settings, consistent with section 1111(b)(8)(D) and (E) of the ESEA, including that the instruction was delivered by qualified personnel.*
- *As a result, it is incumbent upon the special education department to continually evaluate the programs and strategies used by special education staff and to train staff on the use of scientifically research based interventions and programs to address the curriculum.*

- *The term "scientifically based research" means research that involves the application of rigorous, systematic and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs, and includes research that:*
  1. *employs systematic, empirical methods that draw on observation or experiment;*
  2. *involves rigorous data analyses that are adequate to test the state hypotheses and justify the general conclusions drawn;*
  3. *relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;*
  4. *is evaluated using experimental or quasi-experimental designs;*
  5. *ensures that experimental studies are presented in sufficient detail and clarity to allow for replication, and*
  6. *has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.*

VI. PEIMS – PUBLIC EDUCATION INFORMATION MANAGEMENT SYSTEM

§300.640 Annual report of children served - report requirement.

(a) The SEA must annually report to the Secretary on the information required by section 618 of the Act at the times specified by the Secretary.

(b) The SEA must submit the report on forms provided by the Secretary.

§300.641 Annual report of children served - information required in the report. *For all specific requirements the WCSESSA will remain diligent in following requirements specified in the PEIMS manual provided annually by the Texas Education Agency. The WCSESSA utilizes a computer information system to provide an efficient method of collecting and generating the student data necessary for special education program management. This comprehensive system provides a data bank of student-related information and generates required state and federal reports. It also provides other administrative information critical to program planning and management.*

TEC §42.006. Public Information Management System (PEIMS).
http://tea.texas.gov/Reports_and_Data/Data_Submission/PEIMS/PEIMS_-_Overview/

(a) The WCSESSA shall participate in the Public Education Information Management System (PEIMS) and shall provide through that system information required for the administration of this chapter and of other appropriate provisions of this code.

(a-1) The commissioner by rule shall require each school district and open-enrollment charter school to report through the Public Education Information Management System information regarding the number of students enrolled in the district or school who are identified as having dyslexia. The agency shall maintain the information provided in accordance with this subsection.

(b) The WCSESSA shall use a uniform accounting system adopted by the commissioner for the data required to be reported for the Public Education Information Management System.

(c) Annually, the commissioner shall review the Public Education Information Management System and shall repeal or amend rules that require school districts to provide information through the Public Education Information Management System that is not necessary. In reviewing and revising the Public Education Information Management System, the commissioner shall develop rules to ensure that the system:

(1) provides useful, accurate, and timely information on student demographics and academic performance, personnel, and school district finances;

(2) contains only the data necessary for the legislature and the agency to perform their legally authorized functions in overseeing the public education system; and

(3) does not contain any information related to instructional methods, except as provided by Section 29.066 or required by federal law.

(d) The commissioner's rules must ensure that the Public Education Information Management System links student performance data to other related information for purposes of efficient and effective allocation of scarce school resources, to the extent practicable using existing agency resources and appropriations.

TEC §42.006 PEIMS

(a-6) The commissioner by rule shall require each school district and open-enrollment charter school to report through the Public Education Information Management System information disaggregated by campus and grade regarding:

(1) the number of children who are required to attend school under Section 25.085, are not exempted under Section 25.086, and fail to attend school without excuse for 10 or more days or parts of days within a six-month period in the same school year;

(2) the number of students for whom the district initiates a truancy prevention measure under Section 25.0915(a-4); and

(3) the number of parents of students against whom an attendance officer or other appropriate school official has filed a complaint under Section 25.093.

(Section 25.085 is the Compulsory Attendance Requirements
https://statutes.capitol.texas.gov/Docs/ED/htm/ED.25.htm)

VII. PBMAS – PERFORMANCE BASED MONITORING ANALYSIS SYSTEM

For continuous updated information, see the TEA website:
http://tea.texas.gov/Student_Testing_and_Accountability/PBMAS/

§300.157 Performance goals and indicators.
The State must--
(a) Have in effect established goals for the performance of children with disabilities in the State that--
(1) Promote the purposes of this part, as stated in §300.1;
(2) Are the same as the State's long-term goals and measurements of interim progress for children with disabilities under section 1111(c)(4)(A)(i) of the ESEA.
(3) Address graduation rates and dropout rates, as well as such other factors as the State may determine; and
(4) Are consistent, to the extent appropriate, with any other goals and academic standards for children established by the State;
(b) Have in effect established performance indicators the State will use to assess progress toward achieving the goals described in paragraph (a) of this section, including measurements of interim progress for children with disabilities under section 1111(c)(4)(A)(i)(cc) of the ESEA, 20 U.S.C. 6311; and
(c) Annually report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under paragraph (a) of this section, which may include elements of the reports required under section 1111(h) of the ESEA.

§300.229 Disciplinary information.
(a) The State may require that WCSESSA include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children.
(b) The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child.
(c) If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child. (Authority: 20 U.S.C. 1413(i))

§300.170 Suspension and expulsion rates. *(added here also from section 6 discipline)*
(a) General. The SEA must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities--
(1) Among LEAs in the State; or
(2) Compared to the rates for nondisabled children within those agencies.
(b) Review and revision of policies. If the discrepancies described in paragraph (a) of this section are occurring, the SEA must review and, if appropriate, revise (or require the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act. (Authority: 20 U.S.C. 1412(a)(22))

§300.173 Overidentification and disproportionality.
The State must have in effect, consistent with the purposes of this part and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in §300.8.

§300.646 Disproportionality.
(a) General. Each State that receives assistance under Part B of the Act, and the Secretary of the Interior, must provide for the collection and examination of data to determine if significant disproportionality

based on race and ethnicity is occurring in the State and the LEAs of the State with respect to--

(1) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) of the Act;

(2) The placement in particular educational settings of these children; and

(3) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

(b) Review and revision of policies, practices, and procedures. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with paragraph (a) of this section, the State or the Secretary of the Interior must--

(1) Provide for the review and, if appropriate revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of the Act.

(2) Require any LEA identified under paragraph (a) of this section to reserve the maximum amount of funds under section 613(f) of the Act to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified under paragraph (a) of this section; and

(3) Require the LEA to publicly report on the revision of policies, practices, and procedures described under paragraph (b)(1) of this section.

- *Data will be reviewed and areas of concern identified and addressed at the local campus with support from the special education department.*
- *Annual training will be conducted by the evaluation staff to inform campuses of the special education eligibility procedures and criteria.*
- *This annual training will be in collaboration with the campus principal and incorporate the local campus intervention process. Any over identification or other important data information will be noted*
- *Local campuses will identify any additional areas of training needed and report to the principal.*
- *Evaluation procedures will be followed in order to accurately identify students with a disability.*

§300.211 Information for SEA.
The WCSESSA must provide the SEA with information necessary to enable the SEA to carry out its duties under Part B of the Act, including, with respect to §§300.157 and 300.160, information relating to the performance of children with disabilities participating in programs carried out under Part B of the Act. (Authority: 20 U.S.C. 1413(a)(7))

§300.213 Records regarding migratory children with disabilities.
The WCSESSA must cooperate in the Secretary's efforts under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the States, health and educational information regarding those children. (Authority: 20 U.S.C. 1413(a)(9))

Development of the Performance-Based Monitoring Analysis System (PBMAS)
Statutory changes, combined with a 2003 reorganization of the agency, resulted in a revised alignment of agency functions and an emphasis on a coordinated approach to agency monitoring. In this approach, the agency is moving toward an integration of several different agency evaluation and monitoring components, including: the new performance-based monitoring analysis system; federal program and fiscal compliance; the new state accountability system, including alternative education accountability (AEA) procedures; federal accountability provisions, including Adequate Yearly Progress; the Financial Integrity Rating System (FIRST); financial audits; complaints; due process hearings; governance; and other monitoring responsibilities such as those required by Civil Action 5281 and the Office of Civil Rights.

These changes also led to a new definition of agency monitoring: Monitoring is:

1) using a data-driven, performance-based model to observe, evaluate, and report on the public education system at the individual student group, campus, local education agency, regional, and statewide levels across diverse areas including program effectiveness, compliance with federal and state law and regulations, financial management, and data integrity for the purpose of assessing that student needs are being met;

2) promoting diagnostic and evaluative systems in LEAs that are integrated with the agency's desk audit and intervention process; and

3) relying on a research-based framework of interventions that ensure compliance and enhance student success.

The development of the PBMAS is a dynamic and multi-year process. Ongoing development of PBMAS may include the addition of new indicators, revision of current indicators, and deletion of indicators that are no longer necessary. Factors independent from the PBMAS itself are also likely to have an impact on the future development of PBMAS . These factors include: New state accountability system; Reading Proficiency Test in English (RPTE) expansion; Carl D. Perkins Vocational and Technical Education Act and the Individuals with Disabilities Education Improvement Act (IDEA) reauthorizations; No Child Left Behind (NCLB) Act Interpretations; Changes to data collection processes; Legislation from a special session or regular legislative session; and Sunset review of the agency.

The Special Education Monitoring unit of Program Monitoring and Interventions develops and implements integrated program review processes for special education programs statewide that promote program effectiveness and ensure that state supervision and oversight requirements for special education programs are met as required by state and federal law.

The Division of Performance-Based Monitoring is responsible for developing performance-based indicators and elements that will facilitate a coordinated approach to the monitoring of local education agencies. The specific functions of the division include developing indicators, reviewing district and campus performance data, identifying risk areas, and coordinating with other agency divisions to ensure the effective implementation of a data-driven, risk-based monitoring system focused on improving student performance.

From the data contained in the PBMAS, the division also designs and maintains the annual Performance-Based Monitoring Analysis System Summary Report. This is a district-level report that includes specific data for each performance indicator in the PBMAS. A technical resource for understanding this summary report is the PBMAS Manual.

The Division of Performance-Based Monitoring is also responsible for developing and reporting on a variety of data integrity indicators, including indicators to examine leaver/dropout records, disciplinary data, and student assessment data.

§300.120 Monitoring activities.

(a) The SEA must carry out activities to ensure that §300.114 *(LRE section 4 of this document)* **is implemented by each public agency.**

(b) If there is evidence that the WCSESSA makes placements that are inconsistent with §300.114, the TEA must--

(1) Review the public agency's justification for its actions; and

(2) Assist in planning and implementing any necessary corrective action. (Authority: 20 U.S.C. 1412(a)(5))

TEC §29.001. Statewide Plan

The agency shall develop, and modify as necessary, a statewide design, consistent with federal law, for the delivery of services to children with disabilities in this state that includes rules for the administration and funding of the special education program so that a free appropriate public education is available to all of those children between the ages of three and 21. The statewide design shall include the provision of services primarily through school districts and shared services arrangements, supplemented by regional education service centers. The agency shall also develop and implement a statewide plan with programmatic content that includes procedures designed to:

(5) allow the agency to effectively monitor and periodically conduct site visits of all school districts to ensure that rules adopted under this section are applied in a consistent and uniform manner, to ensure that districts are complying with those rules, and to ensure that annual statistical reports filed by the districts and not otherwise available through the Public Education Information Management System under Section 42.006, are accurate and complete;

TEC §29.010. Compliance

(a) The TEA shall adopt and implement a comprehensive system for monitoring school district compliance with federal and state laws relating to special education. The monitoring system must provide for ongoing analysis of district special education data and of complaints filed with the agency concerning special education

services and for inspections of school districts at district facilities. The agency shall use the information obtained through analysis of district data and from the complaints management system to determine the appropriate schedule for and extent of the inspection.

(b) To complete the inspection, the agency must obtain information from parents and teachers of students in special education programs in the district.

(c) The TEA shall develop and implement a system of sanctions for school districts whose most recent monitoring visit shows a failure to comply with major requirements of the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.), federal regulations, state statutes, or agency requirements necessary to carry out federal law or regulations or state law relating to special education.

(d) For districts that remain in noncompliance for more than one year, the first stage of sanctions shall begin with annual or more frequent monitoring visits. Subsequent sanctions may range in severity up to the withholding of funds. If funds are withheld, the agency may use the funds to provide, through alternative arrangements, services to students and staff members in the district from which the funds are withheld.

(e) The agency's complaint management division shall develop a system for expedited investigation and resolution of complaints concerning a district's failure to provide special education or related services to a student eligible to participate in the district's special education program.

(f) This section does not create an obligation for or impose a requirement on a school district or open-enrollment charter school that is not also created or imposed under another state law or a federal law.

TEC §29.0011. PROHIBITED PERFORMANCE INDICATOR.

(a) Notwithstanding Section 29.001(5), Section 29.010, or any other provision of this code, the commissioner or agency may not adopt or implement a performance indicator in any agency monitoring system, including the performance-based monitoring analysis system, that solely measures a school district's or open-enrollment charter school's aggregated number or percentage of enrolled students who receive special education services.

(b) Notwithstanding Section 29.001(5), Section 29.010, or any other provision of this code, the commissioner or agency may not adopt or implement a performance indicator in any agency monitoring system, including the performance-based monitoring analysis system, that solely measures a school district's or open-enrollment charter school's aggregated number or percentage of enrolled students who receive special education services.

(1) 20 U.S.C. Section 1418(d) and its implementing regulations to collect and examine data to determine whether significant disproportionality based on race or ethnicity is occurring in the state and in the school districts and open-enrollment charter schools in the state with respect to the:

(A) identification of children as children with disabilities, including the identification of children as children with particular impairments;

(B) placement of children with disabilities in particular educational settings; and

(C) incidence, duration, and type of disciplinary actions taken against children with disabilities, including suspensions and expulsions; or

(2) 20 U.S.C. Section 1416(a)(3)(C) and its implementing regulations to address in the statewide plan the percentage of school districts and open-enrollment charter schools with disproportionate representation of racial and ethnic groups in special education and related services and in specific disability categories that results from inappropriate identification.

Added by Acts 2017, 85th Leg., R.S., Ch. 59 (S.B. 160), Sec. 1, eff. May 22, 2017.

To review the TEA Corrective Action Plan regarding the PBMAS 8.5% identification criteria see:
https://tea.texas.gov/TexasSPED/

TAC §89.1075. General Program Requirements and Local District Procedures.

(a) The WCSESSA must maintain an eligibility folder for each student receiving special education services, in addition to the student's cumulative record. The eligibility folder must include, but need not be limited to: copies of referral data; documentation of notices and consents; evaluation reports and supporting data; admission, review, and dismissal (ARD) committee reports; and the student's individualized education programs (IEPs). *The WCSESSA will conduct folder audits annually to ensure training of staff on compliance documentation is carried out. The selection process (including number of folders and folder type and location) is determined by the special education director. Documentation of dissemination of the ARD Guide is in the student's eligibility folder. Also see the folder protocol guidelines in the FIE section 2.*

To obtain Discipline and other Data Validation Manuals go to the TEA link:
https://tea.texas.gov/Student_Testing_and_Accountability/Monitoring_and_Interventions/Data_Validation_Monitoring/Data_Validation_Manuals/

VIII. COLLABORATION WITH AGENCIES REGARDING MOUs

The WCSESSA will follow the TEA Memorandum of Understanding with the agencies below.

- Early Transition MOU http://tea.texas.gov/index2.aspx?id=2147494979
- Foster Care System MOU: http://tea.texas.gov/About_TEA/News_and_Multimedia/Correspondence/TAA_Letters/Importance_of_Maintaining_Educational_Stability_for_Children_and_Youth_in_the_Foster_Care_System/
- TAC §89.1100. Memorandum of Understanding on Coordination of Services to Disabled Persons, and
- TAC §89.1115. Memorandum of Understanding Concerning Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities.

TAC §89.1100. Memorandum of Understanding on Coordination of Services to Disabled Persons.
Clarification of financial and service responsibilities of the Texas Department of Human Services, the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, the Texas Rehabilitation Commission, the Texas Commission for the Blind, the Texas Commission for the Deaf, Texas Department of Protective and Regulatory Services, Texas Interagency Council on Early Childhood Intervention, and the Texas Education Agency related to disabled persons are contained in the Memorandum of Understanding on Coordination of Services to Disabled Persons, which is adopted by reference as a rule of the Texas Education Agency. The complete text of the memorandum of understanding may be found in the rules of the Texas Department of Human Services, 40 Texas Administrative Code (TAC) Chapter 72. A copy of the memorandum of understanding is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

TEC §39.0552. MEMORANDUM OF UNDERSTANDING BETWEEN SCHOOL DISTRICT AND STATE HOSPITAL FOR ACCOUNTABILITY PURPOSES.

A memorandum of understanding between a school district and a state hospital under which the district provides educational services to a student who resides in the state hospital must provide that the school district include the performance of the student on an assessment instrument or other achievement indicator adopted under Section 39.053 or a reporting indicator adopted under Section 39.301 in determining the performance of that school district.

SECTION 2. This Act applies to a memorandum of understanding entered into between a school district and a state hospital before, on, or after the effective date of this Act. A memorandum of understanding entered into before the effective date of this Act must be amended as soon as practicable after the effective date of this Act.

https://statutes.capitol.texas.gov/Docs/ED/htm/ED.39.htm

TAC §89.1115. Memorandum of Understanding Concerning Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities.
http://ritter.tea.state.tx.us/rules/tac/chapter089/ch089aa.html#division3 *(89.1115 not updated by TEA - some agency names are incorrect)*

(a) Parties. The state agencies named in this subsection are parties to this memorandum of understanding (MOU) and will be collectively referred to as the "parties." The term "Health and Human Service (HHS) agencies" will refer to all parties except the Texas Education Agency, Texas Juvenile Probation Commission, and Texas Youth Commission.
  (1) Texas Education Agency (TEA);
  (2) Texas Department of Human Services (TDHS);
  (3) Texas Department of Mental Health and Mental Retardation (TDMHMR);
  (4) Texas Department of Health (TDH);
  (5) Texas Department of Protective and Regulatory Services (PRS);
  (6) Texas Interagency Council on Early Childhood Intervention (ECI);
  (7) Texas Commission on Alcohol and Drug Abuse (TCADA);
  (8) Texas Juvenile Probation Commission (TJPC); and
  (9) Texas Youth Commission (TYC).

(b) Purpose. In accordance with Texas Education Code (TEC),§29.012(d), the purpose of this MOU is to:
  (1) establish the respective responsibilities of school districts and of residential facilities (RFs) for the provision of a free appropriate public education (FAPE), as required by the Individuals with Disabilities Education Act (IDEA)(20 USC §1400 et seq.) and its subsequent amendments, including each requirement for children with disabilities who reside in those facilities;

(2) coordinate regulatory and planning functions of the parties;
(3) establish criteria for determining when a public school will provide educational services;
(4) provide for appropriate educational space when education services will be provided at the residential facility;
(5) establish measures designed to ensure the safety of students and teachers; and
(6) provide for binding arbitration consistent with Texas Government Code, Chapter 2009, and Civil Practice and Remedies Code, §154.027.

(c) Definitions. The following words and terms, when used in this MOU, shall have the following meaning, unless the context clearly indicates otherwise.
(1) Consistent with TEC, §5.001(8), "residential facility" (RF) means:
(A) a facility operated by a state agency or political subdivision, including a child placement agency, that provides 24-hour custody or care of a person 22 years of age or younger, if the person resides in the facility for detention, treatment, foster care, or any non-educational purpose; and
(B) any person or entity that contracts with or is funded, licensed, certified, or regulated by a state agency or political subdivision to provide custody or care for a person under subparagraph (A) of this paragraph. RFs include, but are not limited to:
(i) child care facilities or institutions;
(ii) independent foster group homes providing basic, therapeutic or rehabilitative services;
(iii) independent foster family homes providing basic, therapeutic or rehabilitative services;
(iv) agency foster family/group homes verified by a child placing agency licensed by PRS;
(v) intermediate care facilities for individuals with intellectual disabilities (ICFs-IID);
(vi) psychiatric treatment centers;
(vii) therapeutic camps or ranches;
(viii) residential treatment centers licensed by PRS;
(ix) nursing facilities;
(x) TYC halfway houses and contract facilities;
(xi) emergency shelters;
(xii) hospitals;
(xiii) juvenile pre-adjudication detention facilities;
(xiv) juvenile post-adjudication secure correctional facilities;
(xv) residential facilities funded and/or licensed by TCADA;
(xvi) settings other than the student's natural or adoptive home in which residential services are provided in programs authorized by the Social Security Act, §1915(c); and
(xvii)state hospitals, state schools, and state centers operated by TDMHMR.
(2) "Student with a disability" means an individual who is eligible to receive special education and related services in accordance with IDEA and its implementing regulations, Code of Federal Regulations, Title 34, §§300.1 et seq., and state laws and rules, including, without limitation, TEC, Chapter 29, and Chapter 89 of this title (relating to Adaptations for Special Populations).
(3) Consistent with 20 USC §1401(8), "free appropriate public education" (FAPE) means special education and related services that:
(A) are provided at public expense, under public supervision and direction, and without charge;
(B) meet the standards of TEA;
(C) include preschool, elementary, or secondary school education; and
(D) are provided in conformity with the student's individualized education program (IEP).
(4) Consistent with 20 U. S. C. §1401(15), "local educational agency" (LEA) means any public authority, institution, or agency having administrative control and direction of a public elementary or secondary school, including a public charter school that is established as an LEA under state law.

(d) Terms of MOU. The parties agree to the following terms:
(1) The responsibilities of LEAs and RFs related to the provision of a FAPE to students with disabilities who reside in RFs are established as follows.
(A) LEAs must provide or ensure the provision of a FAPE to students with disabilities residing in RFs in accordance with IDEA, applicable federal regulations, and state laws and rules.
(i) Except as provided in paragraph (2) of this subsection, an LEA must provide or ensure the provision of a FAPE for a student with a disability residing in an RF located in the geographical area served by that LEA.
(ii) If an LEA places a student with a disability in an RF for educational purposes, the placing LEA must provide or ensure the provision of a FAPE to the student .

(B) Not later than the third day after the date a person 22 years of age or younger is placed in an RF, the RF must provide notification in accordance with TEC, §29.012(a), as follows:

(i) if the person placed in the RF is three years of age or older, the RF must notify the LEA in which the RF is located, unless the RF is an open-enrollment charter school or the RF has been designated as an LEA (e.g., TYC correctional facilities, Texas School for the Deaf, the University of Texas Medical Branch); or

(ii) if the person placed in the RF is younger than three years of age, the RF must notify a local early childhood intervention program in the area in which the RF is located.

(2) Regulatory and planning functions of the parties are coordinated as follows.

(A) The parties will require LEAs and RFs to:

(i) share, within a reasonable period of time and to the extent permitted by applicable statutes and regulations, all appropriate records and relevant information relating to a student with a disability. This subsection does not authorize the LEA to modify requirements for admission and enrollment into an LEA as set forth in TEC, Chapter 25. The records and information to be shared may include, but are not limited to:

(I) birth certificate or other identifying document that proves the student's age;

(II) medical history and medical records, including current immunization records and a history of infectious disease (e.g., Hepatitis B, tuberculosis), including a description of any behavioral characteristics related to the transmission of such disease;

(III) social history;

(IV) vision and hearing screening and evaluation;

(V) evaluation reports, including psychological, educational, related service, assistive technology and vocational evaluations, and behavioral assessments;

(VI) treatment plan of care or service;

(VII) educational history (e.g., previous educational placement information);

(VIII) any relevant court orders (e.g., orders related to placement in an RF, guardianship or conservatorship, or court-ordered services);

(IX) information regarding a student's movement from an RF to a subsequent residence, including but not limited to the date the student left the RF and the location of the student's subsequent residence; and

(X) name and phone number of contact persons representing the RF and the LEA; and

(ii) coordinate a student's individualized education program (IEP) and treatment plan of care or service. Coordination between an LEA and RF includes but is not limited to communication about responsibilities and timelines related to the development and implementation of the IEP and treatment plan, including permanency planning.

(B) TEA will require LEAs to provide:

(i) the name and phone number of the contact person representing the RF to the surrogate parent, upon assignment of the surrogate parent;

(ii) the name and phone number of the surrogate parent, upon assignment of the surrogate parent, to the contact person representing the RF; and

(iii) designation and training of surrogate parents in accordance with §89.1047 of this title (relating to Procedures for Surrogate and Foster Parents).

(C) TYC and the HHS agencies will provide the following notifications to TEA.

(i) TYC and the HHS agencies, other than PRS, will notify TEA when an RF opens, closes, expands, or reduces its capacity to provide services, if the notifying agency expects such action will have a significant effect on one or more LEAs. The notice will be provided to TEA before the RF opens, closes, expands, or reduces its capacity to provide services, or as soon thereafter as the notifying agency becomes aware of the action. If an RF is closing, the notifying TYC or HHS agency will request that the RF attempt to obtain any consent necessary to release to TEA and an LEA, information about a student with a disability residing in the RF, including the student's name, date of birth, social security number, disability, and name of the LEA to which the student will be moving. TEA will notify the affected LEA of the expected action so the LEA can adjust its capacity to serve students with disabilities.

(ii) PRS will provide TEA with a copy of the notice required by Texas Human Resources Code, §42.0461(a)(2). Additionally, PRS and TEA will explore possible use of PRS' Child Care Licensing Automation Support Services management system to generate information that may assist TEA in its effort to notify LEAs when an RF opens, closes, expands, or reduces its capacity to provide services.

(3) Criteria for determining when a public school will provide educational services are established as follows.
  (A) TEA will ensure that the local school district provides a FAPE to all eligible students with disabilities, in the least restrictive environment (LRE), to the maximum extent appropriate, to meet the individual educational needs of the student as determined by a duly-constituted admission, review, and dismissal (ARD) committee, and in accordance with §89.1001 of this title (relating to Scope and Applicability).
  (B) The student's ARD committee must determine the appropriate educational placement for the student, considering all available information regarding the educational needs of the student, and including the non-educational needs that may restrict the ability of the LEA to serve the student on a public school campus or other instructional setting. These non-educational needs could include the student's health and safety (e.g. substance abuse), and/or the student's placement in a restrictive RF program (e.g., juvenile incarceration or restrictive court-ordered placements). The ARD committee's determination must be individualized based on student need and not made on a categorical basis, such as the student's disability or residence in an RF. Further, ARD committees must not determine educational placement on the basis of what is most convenient to LEAs or RFs.

(4) When educational services will be provided at an RF, appropriate educational space will be determined as follows.
  (A) The ARD committee must determine whether space available at the RF is appropriate for the provision of a FAPE. This determination must be based on the individual student's needs and the RF's available space.
  (B) An ARD committee must find alternative locations for providing educational services if the ARD committee or RF determines that the RF has no appropriate available space.

(5) Measures designed to ensure the safety of students and teachers are established as follows.
  (A) The parties will require RFs and LEAs to agree in writing to the staffing levels that will be maintained by both the RF and the LEA to ensure the safety of students and teachers while educational services are provided at an RF.
  (B) TYC, TJPC, and HHS agencies will require RFs to communicate to LEA staff applicable safety, emergency, and security procedures to be followed while educational services are provided at an RF.

(6) Disputes concerning the implementation of this MOU will be resolved as follows.
  (A) Local disputes. Resolution of disputes concerning implementation of this MOU between LEAs or between an LEA and an RF shall first be attempted at the local level. The specific issues involved in the dispute and possible solutions shall be identified and referred to local personnel authorized to make decisions necessary to resolve the dispute. If resolution is not reached after a reasonable period of time (not to exceed 45 calendar days unless the disputing entities agree otherwise), the LEA shall refer (and the RF may refer) the dispute to TEA for further negotiations toward a mutually agreeable resolution. TEA will contact the disputing entities and set up a meeting for this purpose. Local entities referring disputes to TEA shall identify:
    (i) the nature of the dispute; (ii) any resolutions agreed upon; (iii) the issues that remain unresolved; and (iv) the contact persons representing the disputing entities.
  (B) State agency disputes. Resolution of disputes concerning implementation of this MOU between two or more parties must first be attempted at the staff level. If resolution is not reached after a reasonable period of time (not to exceed 45 calendar days unless the disputing parties agree otherwise), the disputing parties will refer the dispute to their respective executive officers, or their designees for further negotiation. The appropriate state officials shall meet to seek resolution of the dispute.
    (i) Mediation. If the chief executive officers of the disputing parties determine that the dispute cannot be resolved at their level, the disputing parties may pursue resolution through the use of mediation pursuant to the Governmental Dispute Resolution Act, Texas Government Code, Chapter 2009.
    (ii) Arbitration. If the disputing parties do not agree to pursue resolution of their dispute through mediation, or if mediation does not result in a resolution of their dispute, the disputing parties will participate in binding arbitration consistent with Texas Government Code, Chapter 2009, and Texas Civil Practice and Remedies Code, §154.027.

(7) Other terms of this MOU.
  (A) This MOU shall be signed by the executive officers of the participating agencies and shall be effective upon signature by all.
  (B) This MOU may be considered for expansion, modification, or amendment upon mutual agreement of the executive officers of the participating agencies.
  (C) In the event that federal and/or state laws should be amended, federally interpreted, or judicially interpreted so as to render continued implementation of this MOU unreasonable or impossible, the participating agencies may agree to amend or terminate this MOU.

The TEA has worked collaboratively with several agencies to develop memorandum of understandings (MOU) or agreement memorandums (AM) that will assist in the coordination with the numerous state agencies in providing services to students with disabilities.

a. *coordination between ECI, DARS and TEA*
b. *interagency coordination of transition services to students with disabilities (coordination between TCB, TDHS, TDMHMR, TEA, TEC, TRC, and TDPRS) – currently there is no longer an MOU, however, there is an Interagency Letter of Agreement signed and dated 3/23/2005 by Shirley J. Neeley, Commissioner of Education, TEA*
c. *interagency coordination of special education services to students with disabilities in residential care facilities TAC §89.1115. (coordination between TEA, TDHS, TDMHMR, TDH, TDPRS, ECI, TCADA, TJPC, and TYC.) Printed on previous pages.*
d. *Memorandum of Understanding on Coordination of Services to Disabled Persons. TAC §89.1100 (Printed on previous pages)*
e. *Texas School for the Deaf Memorandum of Understanding, TEC §29.315 and MOU between TEA and Texas School for the Deaf §97.1011*
f. *Texas School for the Blind and Visually Impaired Memorandum of Understanding §97.1012*

IX. TRANSFER OF ASSISTIVE TECHNOLOGY DEVICES

TEC §30.0015. Transfer of Assistive Technology Devices.

(a) In this section:
- (1) "Assistive technology device" means any device, including equipment or a product system, that is used to increase, maintain, or improve functional capabilities of a student with a disability.
- (2) "Student with a disability" means a student who is eligible to participate in a school district's special education program under Section 29.003.
- (3) "Transfer" means the process by which a school district that has purchased an assistive technology device may sell, lease, or loan the device for the continuing use of a student with a disability changing the school of attendance in the district or leaving the district.

(b) The TEA by rule shall develop and annually disseminate standards for a school district's transfer of an assistive technology device to an entity listed in this subsection when a student with a disability using the device changes the school of attendance in the district or ceases to attend school in the 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 school district in which the student enrolls;
- (2) a state agency, including the Texas Rehabilitation Commission and the Texas Department of Mental Health and Mental Retardation, that provides services to the student following the student's graduation from high school; or
- (3) the student's parents, or the student if the student has the legal capacity to enter into a contract.

(c) The standards developed under this section must include:
- (1) a uniform transfer agreement to convey title to an assistive technology device and applicable warranty information;
- (2) a method for computing the fair market value of an assistive technology device, including a reasonable allowance for use; and
- (3) a process to obtain written consent by the student's parents, or the student where appropriate, to the transfer.

Parent indicates informed consent by written signature on the TEA - Uniform Transfer Agreement or locally developed form. See also the OSEP Letter to Goodman (June 21, 1998) and 34 CFR §80.32 EDGAR regulation governing equipment.

(d) This section does not alter any existing obligation under federal or state law to provide assistive technology devices to students with disabilities.

TAC §89.1056. Transfer of Assistive Technology Devices.

(a) Unless otherwise specifically defined in this section, the terms used in this section shall have the meanings ascribed to such terms in Texas Education Code (TEC), §30.0015, (Transfer of Assistive Technology Devices).

(b) A transfer of an assistive technology device (ATD) pursuant to TEC, §30.0015, shall be in accordance with a transfer agreement which incorporates the standards described in TEC, §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 pursuant to TEC, §30.0015. The procedures employed by a school district in obtaining such informed consent shall be consistent with the procedures employed by the district to obtain parental consent under 34 Code of Federal Regulations (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, §300.505(c), informed parental or adult student consent need not be obtained if the school 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, the school 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 shall 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 TEC, §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.

(c) The Texas Education Agency shall annually disseminate to school districts the standards for a school district's transfer of an ATD pursuant to TEC, §30.0015.

(d) Nothing in this section or in TEC, §30.0015, shall:
(1) alter any existing obligation under federal or state law to provide ATDs to students with disabilities;
(2) require a school district to transfer an ATD to any person or entity;
(3) limit a school district's right to sell, lease, loan, or otherwise convey or dispose of property as authorized by federal or state laws, rules, or regulations; or
(4) authorize any transfer of an ATD that is inconsistent with any restriction on transferability imposed by the manufacturer or developer of the ATD or applicable federal or state laws, rules, or regulations.

Click below to review the Assistive Technology Region 4 ESC Leadership Function/Project which TEA supports.
http://www.texasat.net/

X. FUNDING

A. Federal Funds

§300.226 Early intervening services.

(a) General. An LEA may not use more than 15 percent of the amount the LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the LEA pursuant to §300.205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who have not been identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

(b) Activities. In implementing coordinated, early intervening services under this section, the WCSESSA may carry out activities that include--

(1) Professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

(2) Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

(c) Construction. Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability.

(d) Reporting. Each LEA that develops and maintains coordinated, early intervening services under this section must annually report to the SEA on--

(1) The number of children served under this section who received early intervening services; and

(2) The number of children served under this section who received early intervening services and subsequently receive special education and related services under Part B of the Act during the preceding two year period.

(e) Coordination with ESEA. Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section. (Authority: 20 U.S.C. 1413(f))

§300.162 Supplementation of State, local, and other Federal funds.

(a) Expenditures. Funds paid to a State under this part must be expended in accordance with all the provisions of this part.

(b) Prohibition against commingling.

(1) Funds paid to a State under this part must not be commingled with State funds.

(2) The requirement in paragraph (b)(1) of this section is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of funds paid to a State under this part. Separate bank accounts are not required. (See 34 CFR 76.702 (Fiscal control and fund accounting procedures)).

(c) State-level nonsupplanting.

(1) Except as provided in §300.202, funds paid to a State under Part B of the Act must be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of the SEA or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act, and in no case to supplant those Federal, State, and local funds.

(2) If the State provides clear and convincing evidence that all children with disabilities have available to them FAPE, the Secretary may waive, in whole or in part, the requirements of paragraph (c)(1) of this section if the Secretary concurs with the evidence provided by the State under §300.164.

§300.163 Maintenance of State financial support.

(a) General. A State must not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

(b) Reduction of funds for failure to maintain support. The Secretary reduces the allocation of funds under section 611 of the Act for any fiscal year following the fiscal year in which the State fails to comply with the requirement of paragraph (a) of this section by the same amount by which the State fails to meet the requirement.

(c) Waivers for exceptional or uncontrollable circumstances. The Secretary may waive the requirement of paragraph (a) of this section for a State, for one fiscal year at a time, if the Secretary determines that--

(1) Granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or

(2) The State meets the standard in §300.164 for a waiver of the requirement to supplement, and not to supplant, funds received under Part B of the Act.

(d) Subsequent years. If, for any fiscal year, a State fails to meet the requirement of paragraph (a) of this section, including any year for which the State is granted a waiver under paragraph (c) of this section, the financial support required of the State in future years under paragraph (a) of this section shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.(Authority: 20 U.S.C. 1412(a)(18))

§300.164 Waiver of requirement regarding supplementing and not supplanting with Part B funds.

(a) Except as provided under §§300.202 through 300.205, funds paid to a State under Part B of the Act must be used to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of SEAs or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act and in no case to supplant those Federal, State, and local funds. A State may use funds it retains under §300.704(a) and (b) without regard to the prohibition on supplanting other funds.

(b) If a State provides clear and convincing evidence that all eligible children with disabilities throughout the State have FAPE available to them, the Secretary may waive for a period of one year in whole or in part the requirement under §300.162 (regarding State-level nonsupplanting) if the Secretary concurs with the evidence provided by the State.

(c) If a State wishes to request a waiver under this section, it must submit to the Secretary a written request that includes--

(1) An assurance that FAPE is currently available, and will remain available throughout the period that a waiver would be in effect, to all eligible children with disabilities throughout the State, regardless of the public agency that is responsible for providing FAPE to them. The assurance must be signed by an official who has the authority to provide that assurance as it applies to all eligible children with disabilities in the State;

(2) All evidence that the State wishes the Secretary to consider in determining whether all eligible children with disabilities have FAPE available to them, setting forth in detail--

(i) The basis on which the State has concluded that FAPE is available to all eligible children in the State; and

(ii) The procedures that the State will implement to ensure that FAPE remains available to all eligible children in the State, which must include--

(A) The State's procedures under §300.111 for ensuring that all eligible children are identified, located and evaluated;

(B) The State's procedures for monitoring public agencies to ensure that they comply with all requirements of this part;

(C) The State's complaint procedures under §§300.151 through 300.153; and

(D) The State's hearing procedures under §§300.511 through 300.516 and §§300.530 through 300.536;

(3) A summary of all State and Federal monitoring reports, and State complaint decisions (see §§300.151 through 300.153) and hearing decisions (see §§300.511 through 300.516 and §§300.530 through 300.536), issued within three years prior to the date of the State's request for a waiver under this section, that includes any finding that FAPE has not been available to one or more eligible children, and evidence that FAPE is now available to all children addressed in those reports or decisions; and

(4) Evidence that the State, in determining that FAPE is currently available to all eligible children with disabilities in the State, has consulted with the State advisory panel under §300.167.

(d) If the Secretary determines that the request and supporting evidence submitted by the State makes a prima facie showing that FAPE is, and will remain, available to all eligible children with disabilities in the State, the Secretary, after notice to the public throughout the State, conducts a public hearing at which all interested persons and organizations may present evidence regarding the following issues:
(1) Whether FAPE is currently available to all eligible children with disabilities in the State.
(2) Whether the State will be able to ensure that FAPE remains available to all eligible children with disabilities in the State if the Secretary provides the requested waiver.
(e) Following the hearing, the Secretary, based on all submitted evidence, will provide a waiver, in whole or in part, for a period of one year if the Secretary finds that the State has provided clear and convincing evidence that FAPE is currently available to all eligible children with disabilities in the State, and the State will be able to ensure that FAPE remains available to all eligible children with disabilities in the State if the Secretary provides the requested waiver.
(f) A State may receive a waiver of the requirement of section 612(a)(18)(A) of the Act and §300.164 if it satisfies the requirements of paragraphs (b) through (e) of this section.
(g) The Secretary may grant subsequent waivers for a period of one year each, if the Secretary determines that the State has provided clear and convincing evidence that all eligible children with disabilities throughout the State have, and will continue to have throughout the one-year period of the waiver, FAPE available to them.

Subpart C – LEA Eligibility

§300.202 Use of amounts.
(a) General. Amounts provided to the WCSESSA under Part B of the Act--
(1) Must be expended in accordance with the applicable provisions of this part;
(2) Must be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with paragraph (b) of this section; and
(3) Must be used to supplement State, local, and other Federal funds and not to supplant those funds.

(b) Excess cost requirement.
(1) General.
(i) The excess cost requirement prevents the WCSESSA from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a child with a disability, subject to paragraph (b)(1)(ii) of this section.
(ii) The excess cost requirement does not prevent theWCSESSA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the ages 3, 4, 5, 18, 19, 20, or 21, if no local or State funds are available for nondisabled children of these ages. However, the WCSESSA must comply with the nonsupplanting and other requirements of this part in providing the education and services for these children.
(2) (i) An LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of the Act are used.
(ii) The amount described in paragraph (b)(2)(i) of this section is determined in accordance with the definition of excess costs in §300.16. That amount may not include capital outlay or debt service.
(3) If two or more LEAs jointly establish eligibility in accordance with §300.223, the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of excess costs in §300.16 in those agencies for elementary or secondary school students, as the case may be. (Authority: 20 U.S.C. 1413(a)(2)(A))

§300.16 Excess costs. Excess costs means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting--
(a) Amounts received--
(1) Under Part B of the Act;
(2) Under Part A of title I of the ESEA; and
(3) Under Part A of title III of the ESEA; and
(b) Any State or local funds expended for programs that would qualify for assistance under any of the parts described in paragraph (a) of this section, but excluding any amounts for capital outlay or debt service. (see Appendix A to Part 300 for an example of how excess cost must be calculated) (Authority: 20 U.S.C. 1401(8))

Excess Cost:
http://tea.texas.gov/index2.aspx?id=2147499857

§300.221 Notification of LEA and State agency in case of ineligibility.
If the SEA determines that an LEA or State agency is not eligible under Part B of the Act, then the SEA must—
(a) Notify the LEA or State agency of that determination; and
(b) Provide the LEA or State agency with reasonable notice and an opportunity for a hearing.
(Authority: 20 U.S.C. 1413(c))

§300.222 LEA and State agency compliance.
(a) General. If the SEA, after reasonable notice and an opportunity for a hearing, finds that an LEA or State agency that has been determined to be eligible under this subpart is failing to comply with any requirement described in §§300.201 through 300.213, the SEA must reduce or must not provide any further payments to the LEA or State agency until the SEA is satisfied that the LEA or State agency is complying with that requirement.
(b) Notice requirement. Any State agency or LEA in receipt of a notice described in paragraph (a) of this section must, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this section to the attention of the public within the jurisdiction of the agency.
(c) Consideration. In carrying out its responsibilities under this section, each SEA must consider any decision resulting from a hearing held under §§300.511 through 300.533 that is adverse to the LEA or State agency involved in the decision. (Authority: 20 U.S.C. 1413(d))

§300.223 Joint establishment of eligibility.
(a) General. An SEA may require an LEA to establish its eligibility jointly with another LEA if the SEA determines that the LEA will be ineligible under this subpart because the agency will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.
(b) Charter school exception. An SEA may not require a charter school that is an LEA to jointly establish its eligibility under paragraph (a) of this section unless the charter school is explicitly permitted to do so under the State's charter school statute.
(c) Amount of payments. If an SEA requires the joint establishment of eligibility under paragraph (a) of this section, the total amount of funds made available to the affected LEAs must be equal to the sum of the payments that each LEA would have received under §300.705 if the agencies were eligible for those payments. (Authority: 20 U.S.C. 1413(e)(1) and (2))

§300.203 Maintenance of effort.
(a) General. Except as provided in §§300.204 and 300.205, funds provided to WCSESSA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.
(b) Standard.
(1) Except as provided in paragraph (b)(2) of this section, the SEA must determine that an LEA complies with paragraph (a) of this section for purposes of establishing the LEA's eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per-capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:
(i) Local funds only.
(ii) The combination of State and local funds.
(2) An LEA that relies on paragraph (b)(1)(i) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in paragraph (b)(1)(i) of this section was used to establish its compliance with this section.
(3) The SEA may not consider any expenditures made from funds provided by the Federal Government for which the SEA is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the SEA in determining an

LEA's compliance with the requirement in paragraph (a) of this section. (Authority: 20 U.S.C. 1413(a)(2)(A))

Below is the link to the MOE announcement letter from TEA regarding IDEA-B LEA MOE compliance determinations. TEA has decided to issue compliance determinations beginning with fiscal year 2015. TEA will use FY 2014 data from the Public Education Information Management System to establish a baseline for each LEA. https://tea.texas.gov/About_TEA/News_and_Multimedia/Correspondence/TAA_Letters/Revised_IDEA-B_LEA_Maintenance_of_Effort_(MOE)_Calculation_Tool_and_New_Resources/ and https://tea.texas.gov/Finance_and_Grants/Grants/Federal_Fiscal_Compliance_and_Reporting/IDEA_Fiscal_Compliance/IDEA-B_LEA_Maintenance_of_Effort/

§300.204 Exception to maintenance of effort.

Notwithstanding the restriction in §300.203(a), the WCSESSA may reduce the level of expenditures by the WCSESSA under Part B of the Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following:

(a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.

(b) A decrease in the enrollment of children with disabilities.

(c) The termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child --

(1) Has left the jurisdiction of the agency;

(2) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or

(3) No longer needs the program of special education.

(d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

(e) The assumption of cost by the high cost fund operated by the SEA under §300.704(c).

(20 U.S.C. 1413(a)(2)(B)) HCF application information: http://tea.texas.gov/index2.aspx?id=2147490628

§300.205 Adjustment to local fiscal efforts in certain fiscal years.

(a) Amounts in excess. Notwithstanding §300.202(a)(2) and (b) and §300.203(a), and except as provided in paragraph (d) of this section and §300.230(e)(2), for any fiscal year for which the allocation received by an LEA under section §300.705 exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by §300.203(a) by not more than 50 percent of the amount of that excess.

(b) Use of amounts to carry out activities under ESEA. If the WCSESSA exercises the authority under paragraph (a) of this section, the WCSESSA must use an amount of local funds equal to the reduction in expenditures under paragraph (a) of this section to carry out activities that could be supported with funds under the ESEA regardless of whether the WCSESSA is using funds under the ESEA for those activities.

(c) State prohibition. Notwithstanding paragraph (a) of this section, if an SEA determines that an LEA is unable to establish and maintain programs of FAPE that meet the requirements of section 613(a) of the Act and this part or the SEA has taken action against the LEA under section 616 of the Act and subpart F of these regulations, the SEA must prohibit the LEA from reducing the level of expenditures under paragraph (a) of this section for that fiscal year.

(d) Special rule. The amount of funds expended by WCSESSA for early intervening services under §300.226 shall count toward the maximum amount of expenditures that the WCSESSA may reduce under paragraph (a) of this section. (Authority: 20 U.S.C. 1413(a)(2)(C))

§300.206 Schoolwide programs under title I of the ESEA.

(a) General. Notwithstanding the provisions of §§300.202 and 300.203 or any other provision of Part B of the Act, an WCSESSA may use funds received under Part B of the Act for any fiscal year to carry out a schoolwide program under section 1114 of the ESEA, except that the amount used in any schoolwide program may not exceed--

(1) (i) The amount received by the WCSESSA under Part B of the Act for that fiscal year;divided by

(ii) The number of children with disabilities in the jurisdiction of the WCSESSA; and multiplied by
(2) The number of children with disabilities participating in the schoolwide program.

(b) Funding conditions. The funds described in paragraph (a) of this section are subject to the following conditions:
(1) The funds must be considered as Federal Part B funds for purposes of the calculations required by §300.202(a)(2) and (a)(3).
(2) The funds may be used without regard to the requirements of §300.202(a)(1).

(c) Meeting other Part B requirements. Except as provided in paragraph (b) of this section, all other requirements of Part B of the Act must be met by an LEA using Part B funds in accordance with paragraph (a) of this section, including ensuring that children with disabilities in schoolwide program schools--
(1) Receive services in accordance with a properly developed IEP; and
(2) Are afforded all of the rights and services guaranteed to children with disabilities under the Act. (Authority: 20 U.S.C. 1413(a)(2)(D))

§300.208 Permissive use of funds.

(a) Uses. Notwithstanding §§300.202, 300.203(a), and §300.162(b), funds provided to an LEA under Part B of the Act may be used for the following activities:
(1) Services and aids that also benefit nondisabled children. For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more nondisabled children benefit from these services.
(2) Early intervening services. To develop and implement coordinated, early intervening educational services in accordance with §300.226.
(3) High cost education and related services. To establish and implement cost or risk sharing funds, consortia, or cooperatives for the LEA itself, or for LEAs working in a consortium of which the LEA is a part, to pay for high cost special education and related services.

(b) Administrative case management. The WCSESSA may use funds received under Part B of the Act to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of children with disabilities, that is needed for the implementation of those case management activities. (Authority: 20 U.S.C. 1413(a)(4))

B. State Funds *(always watch for legislative updates)*

TAC §89.1121. Distribution of State Funds.

(a) Procedures for counting the average daily attendance (ADA) of students receiving special education services in various instructional settings must be developed by the commissioner of education and included in the student attendance accounting handbook adopted under §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook).

(b) State special education funds must be distributed to school districts on the basis of ADA of full-time equivalents of eligible students served in accordance with §129.21 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes).

(c) The special education attendance must be converted to contact hours by instructional arrangement and then to full-time equivalents. The full-time equivalent for each instructional arrangement is multiplied by the school district's adjusted basic allotment (ABA) or adjusted allotment (AA) and then multiplied by the weight for the instructional arrangement as prescribed in the Texas Education Code (TEC), §42.151(a). Contact hours for any one student receiving special education services may not exceed six hours per day or 30 hours per week for funding purposes. The total contact hours generated per week is divided by 30 to determine the full-time equivalents. Special education full-time equivalents generated are deducted from the school district's ADA for purposes of the regular education allotment.

(d) The receipt of special education funds is contingent upon the operation of an approved comprehensive special education program in accordance with state and federal laws and regulations. No district may divert special education funds for other purposes, with the exception of administrative costs as defined in Chapter 105, Subchapter B, of this title (relating to Use of State Funds). Funds generated by full-time equivalents in one instructional arrangement may be spent on the overall special education program and are not limited to the instructional arrangement which generated the funds. The district must maintain separate accountability for the total state special education program fund within the general fund.

(e) A special education fund balance may be carried over to the next fiscal year but must be expended on the special education program in the subsequent year. State special education carryover funds cannot be used for administrative costs.

(f) Students who are at least three, but younger than 22, years of age on September 1 of the current scholastic year who participate in the regional day school program for the deaf may be counted as part of the district's ADA if they receive instruction from the basic program for at least 50% of the school day.

(g) Students from birth through age two with a visual or auditory impairment or both who are provided services by the district according to an individual family services plan (IFSP) must be enrolled on the district home or regional day school campus and must be considered eligible for ADA on the same basis as other students receiving special education services.

(h) Funding for the mainstream special education instructional arrangement must be based on the average daily attendance of the students in the arrangement multiplied by the ABA or AA and the 1.1 weight. The attendance must not be converted to contact hours/full-time equivalents as with the other instructional arrangements.

TEC §105.11. Maximum Allowable Indirect Cost.

(a) No more than 48% of each school district's Foundation School Program (FSP) special allotments under the Texas Education Code, Chapter 42, Subchapter C, may be expended for indirect costs related to the following programs: compensatory education, bilingual education and special language programs, and special education. No more than 45% of each school district's FSP special allotments under the Texas Education Code, Chapter 42, Subchapter C, may be expended for indirect costs related to gifted and talented education programs. No more than 42% of each school district's FSP special allotments under the Texas Education Code, Chapter 42, Subchapter C, may be expended for indirect costs related to career and technical education programs. Indirect costs may be attributed to the following expenditure function codes: 34--Student Transportation; 41--General Administration; 81--Facilities Acquisition and Construction; and the Function 90 series of the general fund, as defined in the Texas Education Agency publication, Financial Accountability System Resource Guide.

(b) For the 2012-2013 school year and each year thereafter, a school district may choose to use a greater indirect cost allotment under the Texas Education Code, §§42.151, 42.153, 42.154, and 42.156, to the extent the school district receives less funding per weighted student in state and local maintenance and operations revenue than in the 2011-2012 school year. The commissioner of education shall develop a methodology for a school district to make a determination under this section and may require any information necessary to implement this subsection. The commissioner's methodology must limit the percentage increase in allowable indirect cost to no more than the percentage decrease in state and local maintenance and operations revenue from the 2011-2012 school year.

TEC §105.12. Basic Allotment.

A school district may use state aid received pursuant to the Texas Education Code (TEC), Chapter 42, Subchapter B, and indirect costs as defined in §105.11 of this title (relating to Maximum Allowable Indirect Cost) for any lawful purpose, including operations and using, purchasing, or acquiring real property or land;improving real property;constructing or equipping buildings;renovating real property;repairing real property;or maintaining real property. A school district may fund obligations from state aid received pursuant to the TEC, Chapter 42, Subchapter B, including reduction of bond tax by deposit into the district debt service fund, lease purchase agreements, and public property finance contracts authorized under the Local Government Code, §271.004 and §271.005; time warrants issued pursuant to the TEC, §45.103; maintenance notes issued pursuant to the TEC, §45.108; and contracts issued pursuant to the TEC, §44.901.

TAC §89.1125. Allowable Expenditures of State Special Education Funds**.**

(a) Persons paid from special education funds shall be assigned to instructional or other duties in the special education program and/or to provide support services to the regular education program in order for students with disabilities to be included in the regular program. Support services shall include, but not be limited to, collaborative planning, co-teaching, small group instruction with special and regular education students, direct instruction to special education students, or other support services determined necessary by the admission, review, and dismissal (ARD) committee for an appropriate program for the student with disabilities. Assignments may include duties supportive to school operations equivalent to those assigned to regular education personnel.

(b) Personnel assigned to provide support services to the regular education program as stated in subsection (a) of this section may be fully funded from special education funds.

(c) If personnel are assigned to special education on less than a full-time basis, except as stated in subsection (a) of this section, only that portion of time for which the personnel are assigned to students with disabilities shall be paid from state special education funds.

(d) State special education funds may be used for special materials, supplies, and equipment which are directly related to the development and implementation of individualized education programs (IEPs) of students and which are not ordinarily purchased for the regular classroom. Office and routine classroom supplies are not allowable. Special equipment may include instructional and assistive technology devices, audiovisual equipment, computers for instruction or assessment purposes, and assessment equipment only if used directly with students.

(e) State special education funds may be used to contract with consultants to provide staff development, program planning and evaluation, instructional services, assessments, and related services to students with disabilities.

(f) State special education funds may be used for transportation only to and from residential placements. Prior to using federal funds for transportation costs to and from a residential facility, a district must use state or local funds based on actual expenses up to the state transportation maximum for private transportation contracts.

(g) State special education funds may be used to pay staff travel to perform services directly related to the education of eligible students with disabilities. Funds may also be used to pay travel of staff (including administrators, general education teachers, and special education teachers and service providers) to attend staff development meetings for the purpose of improving performance in assigned positions directly related to the education of eligible students with disabilities. In no event shall the purpose for attending such staff development meetings include time spent in performing functions relating to the operation of professional organizations. Funds may also be used to pay for the joint training of parents and special education, related services, and general education personnel.

TEC §48.102 ~~42.151~~. Special Education. *(Always keep watch for legislative updates)* for current Accounting Manual updates visit http://tea.texas.gov/index2.aspx?id=25769817607

(a) For each student in average daily attendance in a special education program under Subchapter A, Chapter 29, in a mainstream instructional arrangement, a school district is entitled to an annual allotment equal to the ~~[adjusted]~~ basic allotment, or, if applicable, the sum of the basic allotment and the allotment under Section 48.101 to which the district is entitled, multiplied by 1.15 [1.1]. For each full-time equivalent student in average daily attendance in a special education program under Subchapter A, Chapter 29, in an instructional arrangement other than a mainstream instructional arrangement, a district is entitled to an annual allotment equal to the ~~[adjusted]~~ basic allotment, or, if applicable, the sum of the basic allotment and the allotment under Section 48.101 to which the district is entitled, multiplied by a weight determined according to instructional arrangement as follows:
Homebound 5.0
Hospital class 3.0
Speech therapy 5.0
Resource room 3.0
Self-contained, mild and moderate,regular campus 3.0
Self-contained, severe, regular campus 3.0
Off home campus 2.7
Nonpublic day school 1.7
Vocational adjustment class 2.3

(b) A special instructional arrangement for students with disabilities residing in care and treatment facilities, other than state schools, whose parents or guardians do not reside in the district providing education services shall be established by commissioner rule ~~[under the rules of the State Board of Education]~~. The funding weight for this arrangement shall be 4.0 for those students who receive their education service on a local school district campus. A special instructional arrangement for students with disabilities residing in state schools shall be established by commissioner rule ~~[under the rules of the State Board of Education]~~ with a funding weight of 2.8.

(c) For funding purposes, the number of contact hours credited per day for each student in the off home campus instructional arrangement may not exceed the contact hours credited per day for the multidistrict class instructional arrangement in the 1992-1993 school year.

(d) For funding purposes the contact hours credited per day for each student in the resource room; self-contained, mild and moderate; and self-contained, severe, instructional arrangements may not exceed the average of the statewide total contact hours credited per day for those three instructional arrangements in the 1992-1993 school year.

(e) The commissioner ~~[State Board of Education]~~ by rule shall prescribe the qualifications an instructional arrangement must meet in order to be funded as a particular instructional arrangement under this section. In prescribing the qualifications that a mainstream instructional arrangement must meet, the commissioner ~~[board]~~ shall establish requirements that students with disabilities and their teachers receive the direct, indirect, and support services that are necessary to enrich the regular classroom and enable student success.

(f) In this section, "full-time equivalent student" means 30 hours of contact a week between a special education student and special education program personnel.

(g) The commissioner ~~[State Board of Education]~~ shall adopt rules and procedures governing contracts for residential placement of special education students. The legislature shall provide by appropriation for the state's share of the costs of those placements.

(h) At least 55 percent of the funds ~~[Funds]~~ allocated under this section ~~[, other than an indirect cost allotment established under State Board of Education rule,]~~ must be used in the special education program under Subchapter A, Chapter 29.

(i) The agency shall encourage the placement of students in special education programs, including students in residential instructional arrangements, in the least restrictive environment appropriate for their educational needs.

(j) ~~[(k)]~~ A school district that provides an extended year program required by federal law for special education students who may regress is entitled to receive funds in an amount equal to 75 percent, or a lesser percentage determined by the commissioner, of the ~~[adjusted]~~ basic allotment, or, if applicable, the sum of the basic allotment and the allotment under Section 48.101 to which the district is entitled ~~[or adjusted allotment, as applicable,]~~ for each full-time equivalent student in average daily attendance, multiplied by the amount designated for the student's instructional arrangement under this section, for each day the program is provided divided by the number of days in the minimum school year. The total amount of state funding for extended year services under this section may not exceed $10 million per year. A school district may use funds received under this section only in providing an extended year program.

(k) ~~[(l)]~~ From the total amount of funds appropriated for special education under this section, the commissioner shall withhold an amount specified in the General Appropriations Act, and distribute that amount to school districts for programs under Section 29.014. The program established under that section is required only in school districts in which the program is financed by funds distributed under this subsection and any other funds available for the program. After deducting the amount withheld under this subsection from the total amount appropriated for special education, the commissioner shall reduce each district's allotment proportionately and shall allocate funds to each district accordingly.

TEC §42.2528. EXCESS FUNDS FOR VIDEO SURVEILLANCE OF SPECIAL EDUCATION SETTINGS.
See Section 7. PROCEDURAL SAFEGUARDS for TEC §42.2528 funding of TEC §29.002 Video surveillance of special education settings.

C. Hospitals

TEC §29.014. School Districts that Provide Education Solely to Students Confined to or Educated in Hospitals.

(a) This section applies only to a school district that provides education and related services only to students who are confined in or receive educational services in a hospital.

(b) A school district to which this section applies may operate an extended year program for a period not to exceed 45 days. The district's average daily attendance shall be computed for the regular school year plus the extended year.

(c) Notwithstanding any other provision of this code, a student whose appropriate education program is a regular education program may receive services and be counted for attendance purposes for the number of hours per week appropriate for the student's condition if the student:
  (1) is temporarily classified as eligible for participation in a special education program because of the student's confinement in a hospital; and
  (2) the student's education is provided by a district to which this section applies.

(d) The basic allotment for a student enrolled in a district to which this section applies is adjusted by:
  (1) the cost of education adjustment under Section 42.102 for the school district in which the district is geographically located; and
  (2) the weight for a homebound student under Section 42.151(a).

D. JJAEP

TEC §37.0061. Funding for Alternative Education Services in Juvenile Residential Facilities
A school district that provides education services to pre-adjudicated and post-adjudicated students who are confined by court order in a juvenile residential facility operated by a juvenile board is entitled to count such students in the district's average daily attendance for purposes of receipt of state funds under the Foundation School Program. If the district has a wealth per student greater than the guaranteed wealth level but less than the equalized wealth level, the district in which the student is enrolled on the date a court orders the student to be confined to a juvenile residential facility shall transfer to the district providing education services an amount equal to the difference between the average Foundation School Program costs per student of the district providing education services and the sum of the state aid and the money from the available school fund received by the district that is attributable to the student for the portion of the school year for which the district provides education services to the student.

E. Nonpublic - Private School

TAC §89.63. Instructional Arrangements and Settings.
(e) For nonpublic day school placements, the WCSESSA will submit information to the TEA indicating the students' identification numbers, initial dates of placement, and the names of the facilities with which the school district or shared service arrangement is contracting. The school district or shared service arrangement shall not count contract students' average daily attendance as eligible. The TEA will determine the number of contract students reported in full-time equivalents and pay state funds to the WCSESSA according to the formula prescribed in law.

§300.142 Use of personnel. See also Sect. 5 Instructional Arrangements for Private Schools
(a) Use of public school personnel. The WCSESSA may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities--
(1) To the extent necessary to provide services under §§300.130 through 300.144 for parentally-placed private school children with disabilities; and
(2) If those services are not normally provided by the private school.
(b) Use of private school personnel. The WCSESSA may use funds available under sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under §§300.130 through 300.144 if--
(1) The employee performs the services outside of his or her regular hours of duty; and
(2) The employee performs the services under public supervision and control.

F. Noneducational Funds

TEC §29.013. Noneducational Community-based Support Services for Certain Students with Disabilities.
(a) The agency shall establish procedures and criteria for the allocation of funds appropriated under this section to school districts for the provision of noneducational community-based support services to certain students with disabilities and their families so that those students may receive an appropriate free public education in the least restrictive environment.
(b) The funds may be used only for eligible students with disabilities who would remain or would have to be placed in residential facilities primarily for educational reasons without the provision of noneducational community-based support services.
(c) The support services may include in-home family support, respite care, and case management for families with a student who otherwise would have been placed by a district in a private residential facility.
(d) The provision of services under this section does not supersede or limit the responsibility of other agencies to provide or pay for costs of noneducational community-based support services to enable any student with disabilities to receive a free appropriate public education in the least restrictive environment. Specifically, services provided under this section may not be used for a student with disabilities who is currently placed or who needs to be placed in a residential facility primarily for noneducational reasons.

G. Public Insurance

§300.154. Methods of ensuring services.
(d) Children with disabilities who are covered by public benefits or insurance .
(1) The WCSESSA may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this part, as permitted under the

public benefits or insurance program, except as provided in paragraph (d)(2) of this section.

(2) With regard to services required to provide FAPE to an eligible child under this part, the WCSESSA--

(i) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of the Act;

(ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parent otherwise would be required to pay;

(iii) May not use a child's benefits under a public benefits or insurance program if that use would--

(A) Decrease available lifetime coverage or any other insured benefit;

(B) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;

(C) Increase premiums or lead to the discontinuation of benefits or insurance; or

(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and

(iv) (A) Must obtain parental consent consistent with §300.9 each time that access to public benefits or insurance is sought; and

(B) Notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(e) Children with disabilities who are covered by private insurance.

(1) With regard to services required to provide FAPE to an eligible child under this part, the WCSESSA may access a parent's private insurance proceeds only if the parent provides consent consistent with §300.9.

(2) Each time the WCSESSA proposes to access the parent's private insurance proceeds, the WCSESSA must--

(i) Obtain parental consent in accordance with paragraph (e)(1) of this section; and

(ii) Inform the parents that their refusal to permit the WCSESSA to access their private insurance does not relieve the WCSESSA of its responsibility to ensure that all required services are provided at no cost to the parents.

(f) Use of Part B funds.

(1) If the WCSESSA is unable to obtain parental consent to use the parent's private insurance, or public benefits or insurance when the parent would incur a cost for a specified service required under this part, to ensure FAPE the WCSESSA may use its Part B funds to pay for the service.

(2) To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parent would incur a cost, the WCSESSA may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parent's benefits or insurance (e.g., the deductible or co-pay amounts).

(g) Proceeds from public benefits or insurance or private insurance.

(1) Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 CFR 80.25.

(2) If the WCSESSA spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in §§300.163 and 300.203.

(h) Construction. Nothing in this part should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public benefits or insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397aa through 1397jj, or any other public benefits or insurance program. (Authority: 20 U.S.C. 1412(a)(12) and (e))

Government Code §531.02171. REIMBURSEMENT FOR CERTAIN TELEHEALTH SERVICES.

(a) In this section, "health professional" means an individual who is:

(1) licensed, registered, certified, or otherwise authorized by this state to practice as a social worker, occupational therapist, or speech-language pathologist;

(2) a licensed professional counselor;

(3) a licensed marriage and family therapist; or
(4) a licensed specialist in school psychology.

(b) The commission shall ensure that Medicaid reimbursement is provided to a school district or open-enrollment charter school for telehealth services provided through the school district or charter school by a health professional, even if the health professional is not the patient's primary care provider, if:
(1) the school district or charter school is an authorized health care provider under Medicaid; and
(2) the parent or legal guardian of the patient provides consent before the service is provided.

SECTION 2. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 3. This Act takes effect September 1, 2017.

H. TSD – Texas School for the Deaf

TEC §30.087. Funding.

(a) The cost of educating students who are deaf or hard of hearing shall be borne by the state and paid from the foundation school fund, but independent school districts and institutions of higher education in the state may and are encouraged to make available property or services in cooperation with the regional day school programs for the deaf for any activities related to the education of students who are deaf or hard of hearing, including research, personnel training, and staff development.

(b) From the amount appropriated for regional day school programs, the commissioner shall allocate funds to each program based on the number of weighted full-time equivalent students served. The commissioner may consider local resources available in allocating funds under this subsection.

(c) A school district may receive an allotment for transportation of students participating in a regional day school program, determined in the same manner as an allotment for the transportation of other special education students.

TEC §30.056. Funding of the Texas School for the Deaf.

The funding of the Texas School for the Deaf consists of:
(1) money the legislature specifically appropriates for the school;
(2) money the agency allocates to the school under this code;
(3) money paid under a contract or other agreement;
(4) money the school receives through a gift or bequest;
(5) a payment the school receives from a school district under Section 30.003; and
(6) the school's share of the available school fund and payments to compensate for payments no longer made from the available school fund as provided by Section 30.003(f).

TEC §30.003.Support of Students Enrolled in Texas School for the Blind and Visually Impaired or Texas School for the Deaf.

(a) For each student enrolled in the Texas School for the Blind and Visually Impaired or the Texas School for the Deaf, the school district that is responsible for providing appropriate special education services to the student shall share the cost of the student's education as provided by this section.

(b) If the student is admitted to the school for a full-time program for the equivalent of two long semesters, the district's share of the cost is an amount equal to the dollar amount of maintenance and debt service taxes imposed by the district for that year divided by the district's average daily attendance for the preceding year.

(c) If the student is admitted for a program less than two complete semesters in duration, other than a summer program, the district's share of the cost is an amount equal to the amount that would be the district's share under Subsection (b) for a full-time program multiplied by the quotient resulting from the number of full-time equivalent days in the program divided by the minimum number of days of instruction for students as provided by Section 25.081.

(d) Each school district and state institution shall provide to the commissioner the necessary information to determine the district's share under this section. The information must be reported to the commissioner on or before a date set by rule of the State Board of Education. After determining the amount of a district's share for all students for which the district is responsible, the commissioner shall deduct that amount from the payments of foundation school funds payable to the district. Each deduction shall be in the same percentage of the total amount of the district's share as the percentage of the total foundation school fund entitlement being paid to the district at the time of the deduction, except that the amount of any deduction may be modified to make

necessary adjustments or to correct errors. The commissioner shall provide for remitting the amount deducted to the appropriate school at the same time at which the remaining funds are distributed to the district. If a district does not receive foundation school funds or if a district's foundation school entitlement is less than the amount of the district's share under this section, the commissioner shall direct the district to remit payment to the commissioner, and the commissioner shall remit the district's share to the appropriate school.

(e) For each student enrolled in the Texas School for the Blind and Visually Impaired or the Texas School for the Deaf, the appropriate school is entitled to the state available school fund apportionment.

(f) The commissioner, with the assistance of the comptroller, shall determine the amount that the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf would have received from the available school fund if Chapter 28, Acts of the 68th Legislature, 2nd Called Session, 1984, had not transferred statutorily dedicated taxes from the available school fund to the foundation school fund. That amount, minus any amount the schools do receive from the available school fund, shall be set apart as a separate account in the foundation school fund and appropriated to those schools for educational purposes.

(f-1) The commissioner shall determine the total amount that the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf would have received from school districts in accordance with this section if H.B. No. 1, Acts of the 79th Legislature, 3rd Called Session, 2006, had not reduced the districts' share of the cost of providing education services. That amount, minus any amount the schools do receive from school districts, shall be set aside as a separate account in the foundation school fund and appropriated to those schools for educational purposes.

(g) The State Board of Education may adopt rules as necessary to implement this section.

(h) Expired.

I. RDSPD – Regional Day School Programs for the Deaf

TEC §30.085. Use of Local Resources. Local resources shall be used to the fullest practicable extent in the establishment and operation of the regional day school programs for the deaf.

TEC §30.086. Powers and Duties of Agency.

(a) The agency shall contract with any qualified organization or individual for diagnostic, evaluative, or instructional services or any other services relating to the education of students who are deaf or hard of hearing, including transportation or maintenance services.

(b) The agency shall employ educational and other personnel, may purchase or lease property, may accept gifts or grants of property or services from any source, including an independent school district or institution of higher education in this state, to establish and operate regional day school programs for the deaf.

TEC §30.087. Funding.

(a) The cost of educating students who are deaf or hard of hearing shall be borne by the state and paid from the foundation school fund, but independent school districts and institutions of higher education in the state may and are encouraged to make available property or services in cooperation with the regional day school programs for the deaf for any activities related to the education of students who are deaf or hard of hearing, including research, personnel training, and staff development.

(b) From the amount appropriated for regional day school programs, the commissioner shall allocate funds to each program based on the number of weighted full-time equivalent students served. The commissioner may consider local resources available in allocating funds under this subsection.

(c) A school district may receive an allotment for transportation of students participating in a regional day school program, determined in the same manner as an allotment for the transportation of other special education students.

J. TSBVI – Texas School for the Blind and Visually Impaired

§300.210 Purchase of instructional materials.

(a) General. Not later than December 3, 2006, an LEA that chooses to coordinate with the National Instructional Materials Access Center, when purchasing print instructional materials, must acquire those instructional materials in the same manner, and subject to the same conditions as an SEA under §300.172.

(b) Rights of LEA.

(1) Nothing in this section shall be construed to require an LEA to coordinate with the National Instructional Materials Access Center (NIMAC).

(2) If an LEA chooses not to coordinate with the National Instructional Materials Access Center, the LEA must provide an assurance to the SEA that the LEA will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(3) Nothing in this section relieves an LEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities in 300.172(e)(1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

TEC §30.002. Education for Children with Visual Impairments**.**

(g) To facilitate implementation of this section, the commissioner shall develop a system to distribute from the foundation school fund to school districts or regional education service centers a special supplemental allowance for each student with a visual impairment and for each student with a serious visual disability and another medically diagnosed disability of a significantly limiting nature who is receiving special education services through any approved program. The supplemental allowance may be spent only for special services uniquely required by the nature of the student's disabilities and may not be used in lieu of educational funds otherwise available under this code or through state or local appropriations.

TEC §30.003. Support of Students Enrolled in Texas School for the Blind and Visually Impaired or Texas School for the Deaf. *(found in section H. above)*

TAC §89.62. Support of Students Enrolled in the Texas School for the Blind and Visually Impaired and Texas School for the Deaf.

(a) For each student enrolled in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf, the school district responsible for providing appropriate special education and related services to the student shall share the cost of the student's education (excluding the summer programs) as provided under the Texas Education Code, §30.003.

(1) The information required in accordance with the Texas Education Code, §30.003(d), must be submitted in a form prescribed by the commissioner of education within 30 calendar days after the student enrolls in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf.

(2) School districts required to remit their shares to the Texas Education Agency in accordance with the Texas Education Code, §30.003(d), shall do so within 60 days of notification by the commissioner of education.

(b) School districts shall provide, annually, in writing to each parent or legal guardian of an eligible student with visual or auditory impairments, the information specified in the Texas Education Code, §30.004(a)(1-3), before considering the student's placement for special education services.

TEC §30.025. Funding of Texas School for the Blind and Visually Impaired

The funding of the Texas School for the Blind and Visually Impaired consists of:

(1) money the legislature specifically appropriates to the school;

(2) money the agency allocates to the school under this code;

(3) money paid under a contract or other agreement;

(4) money the school receives through a gift or bequest;

(5) a payment the school receives from a school district under Section 30.003; and

(6) the school's share of the available school fund and payments to compensate for payments no longer made from the available school fund as provided by Section 30.003(f).

§300.172 Access to instructional materials.

(a) General. The State must—

(1) Adopt the National Instructional Materials Accessibility Standard (NIMAS), published as Appendix C to Part 300, for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after publication of the NIMAS in the Federal Register on July 19, 2006 (71 FR 41084); and

(2) Establish a State definition of "timely manner" for purposes of paragraphs (b)(2) and (b)(3) of this section if the State is not coordinating with the National Instructional Materials Access Center (NIMAC) or (b)(3) and (c)(2) of this section if the State is coordinating with the NIMAC.

(b) Rights and responsibilities of SEA.

(1) Nothing in this section shall be construed to require any SEA to coordinate with the National Instructional Materials Access Center (NIMAC).

(2) If an SEA chooses not to coordinate with the NIMAC, the agency must provide an assurance to the Secretary that the agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(3) Nothing in this section relieves an SEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats, but are not included under the definition of blind or other persons with print disabilities in 300.172(e)(1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

(4) In order to meet its responsibility under paragraphs (b)(2), (b)(3), and (c) of this section to ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner, the SEA must ensure that all public agencies take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials.

(c) Preparation and delivery of files. If an SEA chooses to coordinate with the NIMAC, as of December 3, 2006, the SEA must,

(1) As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, must enter into a written contract with the publisher of the print instructional materials to--

(i) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or

(ii) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

(2) Provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(d) Assistive technology. In carrying out this section, the SEA, to the maximum extent possible, must work collaboratively with the State agency responsible for assistive technology programs.

(e) Definitions.

(1) In this section and §300.210--

(i) Blind persons or other persons with print disabilities means children served under this part who may qualify to receive books and other publications produced in specialized formats in accordance with the Act entitled "An Act to provide books for adult blind," approved March 3, 1931, 2 U.S.C 135a;

(ii) National Instructional Materials Access Center or NIMAC means the center established pursuant to section 674(e) of the Act;

(iii) National Instructional Materials Accessibility Standard or NIMAS has the meaning given the term in section 674(e)(3)(B) of the Act; and

(iv) Specialized formats has the meaning given the term in section 674(e)(3)(D) of the Act.

(2) The definitions in paragraph (e)(1) of this section apply to each State and LEA, whether or not the State or LEA chooses to coordinate with the NIMAC. (Authority: 20 U.S.C. 1412(a)(23), 1474(e))

K. Residential *(see Section 5 Instructional Arrangements for all references to Residential)*

XI. STATE PERFORMANCE PLAN and ANNUAL PERFORMANCE REPORT

Information about the State Performance Plan (SPP) / Annual Performance Report (APR) and requirements related to the SPP/APR can be found on the TEA website at:
http://www.tea.state.tx.us/index2.aspx?id=2147497591

About the SPP / APR
The Individuals with Disabilities Education Act of 2004 (IDEA 2004), requires each state to develop a six-year performance plan. This State Performance Plan (SPP) evaluates the State's efforts to implement the requirements and purposes of IDEA and illustrates how the State will continuously improve upon this implementation.

Fact Sheet on State Performance Plan
In alignment with IDEA 2004, the US Department of Education Office of Special Education Programs (OSEP) has identified five monitoring priorities within the SPP: (1) Free Appropriate Public Education in the Least Restrictive Environment; (2) Disproportionality; (3) Child Find; (4) Effective Transition; and (5) General Supervision. The PBMAS system uses these areas in the SPP to collect data and monitor school performance.

Monitoring Priority: Free Appropriate Public Education in the Least Restrictive Environment
- Graduation (Indicator 1)
- Dropout (Indicator 2)
- Participation and Performance on Statewide Assessment (Indicator 3A-C)
- Suspension/Expulsion (Indicator 4A-C)
- Educational Environment, Ages 6-21 (Indicator 5A-C)
- Educational Environment, Ages 3-5 (Indicator 6A-B)
- Early Childhood Outcomes (Indicator 7A-C)
- Parent Participation (Indicator 8)

Monitoring Priority: Disproportionality
- Disproportionality in the special education program (Indicator 9)
- Disproportionality by specific disability (Indicator 10)

Monitoring Priority: Effective General Supervision Part B/Child Find
- Child Find (Indicator 11)

Monitoring Priority: Effective General Supervision Part B/Effective Transition
- Early Childhood Transition (Indicator 12)
- Secondary Transition (Indicator 13)
- Post-School Outcomes (Indicator 14A-C)

Monitoring Priority: Effective General Supervision Part B/General Supervision
- Resolution Sessions (Indicator 15)
- Mediation (Indicator 16)
- State Systemic Improvement Plan (SSIP) (Indicator 17)

The Texas Education Agency (TEA) and the Federal Office of Special Education Programs (OSEP) have requirements to monitor, provide technical assistance and enforcement, see Section XIV on the following pages. Continuous Improvement Plans in the WCSESSA will use data analysis and focus on the indicators from the SPP / PBMAS, etc. when data show "needs improvement".

Indicator 13 Secondary Transition Percent of youth aged 16 and above with an IEP that includes coordinated, measurable, annual IEP goals and transition services that will reasonably enable the student to meet the post-secondary goals. *In preparation for Indicator 14, the WCSESSA will gather data from exiting special education seniors during their twelfth grade year. Data gathered will include but not be limited to: DADS and DARS Intake,*

Testing, IPE date(Individual Plan for Employability), Refused services date, Comments, Counselor Name/phone number.

Indicator 14 Post-School Outcomes Percent of youth who had IEPs, are no longer in secondary school and who have been competitively employed, enrolled in some type of postsecondary school, or both, within one year of leaving high school. *The WCSESSA will annually complete a One Year Follow-up by phone to the last known number. Documentation will include tracking the following information:*
Student is: Working pt time paid (up to 29 hours), working full time paid (30 hours +), attending vocational/technical school, 2 year communi ty college, 4 year college, in the military, enroll ed in GED, receiving employment related training, supported employment, connected with DARS, connected with DADS, refused to provide information, unable to locate, other.

XII. EMPLOY AND ADVANCE QUALIFIED INDIVIDUALS WITH DISABILITIES

§300.177 States' sovereign immunity and positive efforts to employ and advance qualified individuals with disabilities.

(a) States' sovereign immunity.

(1) A State that accepts funds under this part waives its immunity under the 11th amendment of the Constitution of the United States from suit in Federal court for a violation of this part.

(2) In a suit against a State for a violation of this part, remedies (including remedies both at law and in equity) are available for such a violation in the suit against any public entity other than a State.

(3) Paragraphs (a)(1) and (a)(2) of this section apply with respect to violations that occur in whole or part after the date of enactment of the Education of the Handicapped Act Amendments of 1990.

(b) Positive efforts to employ and advance qualified individuals with disabilities. Each recipient of assistance under Part B of the Act must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the Act.

The Special Education Department (including High School VAC's) in WCSESSA will work in cooperation with the Personnel Office and Administration to carefully review job openings within the district. Consideration will be given to any qualified individual with disabilities to advance in employment. Examples of positive efforts may include providing employment vacancy information to organizations for persons with disabilities and conducting job fairs for persons with disabilities.

TEC §531.02447. Employment-First Policy (SB 1226)

(a) It is the policy of the state that earning a living wage through competitive employment in the general workforce is the priority and preferred outcome for working-age individuals with disabilities who receive public benefits.

(b) The commission, the Texas Education Agency, and the Texas Workforce Commission shall jointly adopt and implement an employment-first policy in accordance with the state's policy under Subsection (a). The policy must:

(1) affirm that an individual with a disability is able to meet the same employment standards as an individual who does not have a disability;

(2) ensure that all working-age individuals with disabilities, including young adults, are offered factual information regarding employment as an individual with a disability, including the relationship between an individual's earned income and the individual's public benefits;

(3) ensure that individuals with disabilities are given the opportunity to understand and explore options for education or training, including postsecondary, graduate, and postgraduate education, vocational or technical training, or other training, as pathways to employment;

(4) promote the availability and accessibility of individualized training designed to prepare an individual with a disability for the individual's preferred employment;

(5) promote partnerships with employers to overcome barriers to meeting workforce needs with the creative use of technology and innovation;

(6) ensure that the staff of public schools, vocational service programs, and community providers are trained and supported to assist in achieving the goal of competitive employment for all indivduals with disabilities; and

(7) ensure that competitive employment, while being the priority and preferred outcome, is not required of an indivdiual with a disability to secure or maintain public benefits for which the individual is otherwise eigible.

TEC §531.02448. Employment-First Task Force.

(a) The executive commissioner shall establish an interagency employment-first task force, or may use an existing committee or task force, to promote competitive employment of individuals with disabilities and the expectation that individuals with disabilities are able to meet the same employment standards, responsibilities, and expectations as any other working-age adult.

(b)....

XIII. DEPARTMENTAL BUDGET PROCESS

A. Roles and Responsibilities

__1. Written budget management job responsibilities for the special education budget clerk, secretaries, coordinators and supervisors are on file and provided annually.

__2. Budget details are reviewed on a regularly scheduled monthly basis. The director maintains oversight and final authority role in all budget decisions. Budget management is not delegated to the budget clerk.

__3. Timelines are coordinated with the district budget office to ensure that reports reviewed by the special education department contain the most current expenditures (i.e., schedule around monthly postings/disbursements).

__4. Work is done directly with the district budget office to correct coding errors. Funding allotments for unfilled positions (i.e., 1/12 th per month) are reduced or moved. Review independent consultant contracts to ensure full implementation. If full implementation is not occurring, transfer funds to another line item.

Decentralized :

- *Our district is large enough that decentralized budget management is practiced (meaning the delegation of program specific budget management and decision-making authority to special education coordinators or supervisors). The Job Description for coordinators/ supervisors include budget responsibilities as needed.*
- *Components that need to be decentralized consist of program specific independent contract management, materials, and staff development and travel.*
- *Time is scheduled at least once monthly during established department leadership team meetings to discuss all components of the decentralized budget.*

B. Budget Notebooks

*A separate budget notebook is maintained for each fiscal year. NOTE: For a Shared Service Arrangement include divisions for each member district. Department budget notebooks will be maintained for at least **five** years for reference in determining trends over time, salary increases, the funding balance between federal and local funds and high impact issues.*

C. System Components

__1. Review data:

__i. Travel: District and out of district expenses (total, total by staff member, etc.)

__ii. Staff Development: Training requests by type, person requesting, number of days, cost;local training based on short/long range plan.

__iii. Independent Consultants: Type, number of days, total cost per year.

__iv. Instructional Materials: Type of request, verification of Scientifically based Research (SBR)

__v. Private Schools: IDEA 2004 requires that the WCSESSA maintain records and provide information to the state education agency (SEA).

__a. Number determined to be children with disabilities

__b. Number of children served

__c. Type of consultation between LEA and private school

__d. Proportionate share amount, expenditures and roll forward amount

__ e. List of representatives of private schools (maintain on file at the LEA level)

__vi. High Cost Funds (HCF) formerly know as Rider 55: Establish a list of students whose direct special education and related services costs will exceed $25,000 per school year. The ARD Schedule of Services page is used as a reference (i.e., salary for personnel hired to directly work with the student;related services costs;etc.).

__a. Deaf education interpreter: Consulting fees, round trip mileage to Nonpublic Day School.

__b. Bus monitor hired specifically to supervise student (hours per day)

__c. Nonpublic Day School Tuition (monthly costs including summer programs)

__d. Assistive Technology costs for equipment purchased for this student.

Enter costs throughout the school year so that the district can apply for and receive benefit from funds to support the excess costs of providing special education and related services to high need students.

__2. Time and Effort Reports: Personnel funded 100% with IDEA-B Formula or IDEA-B Preschool Funds will submit verification form twice annually. Split-funded personnel must file monthly time and effort reports.

__3. Materials Requisition and Capital Outlay: Departmental materials requisition forms are used and submission timelines shared with staff are followed. Capital outlay purchases are planned using short and long range planning as appropriate.

__4. Noneducational Community-Based Support Services

__5. Nonpublic Day School Programs – maintain and review if required

__6. Residential Applications – complete if required

__7. Other Unique Situations

__i. Site Based-Decision Making: Principals make special education teaching position decisions at the campus level with or without input from the director.

__ii. Special Education Teaching/Coaching Positions.

D. Budget Adjustments and Amendments

__1. Effective budget management requires on-going budget adjustments to make the budget work for identified departmental needs and goals. An established monthly review process will enable directors to move money from unfilled salary positions, travel, etc. to areas of need and will lead to efficiency in spending the budget/reducing excessive roll forward amounts. Transfers between direct cost categories (class/objects) may be made without amending the budget as long as the cumulative amount of the transfers does not exceed 25% of the total approved budget.

__2. Budget amendments must be submitted when:

__a. the additional unbudgeted funds are received (i.e., High Cost Funds (Rider 55), roll forward, funding to maximum entitlement) and/or

__b. cumulative transfers between major expenditure objects (e.g., class/object codes 6100, 6200, 6300, etc.) exceed the 25% allowable amount.

__3. Completed the following prior to February of each school year and before submission of the funding to full entitlement amendment:

__a. Residential Set Aside: Decrease this amount by 50% if the district does not have any students in a residential placement.

__b. Vacant or Unfilled Positions: Reduce funding for all open positions by at least 50% and address the budget changes on the eGrant Amendment #2.

__c. Capital Outlay: Increase or decrease based on plan implementation, make changes on the eGrant Amendment #2.

__4. Roll forward and lapsed funds: Careful planning and monthly review will avoid need to quickly spend large amounts of funds at the end of a program simply to lower the account balances.

E. Maintenance of Effort

Local education agencies (LEA) must comply with IDEA 2004 Maintenance of Effort requirements found at 34 CFR §300.162-163 and §§300.203-205. This means that an LEA must ensure that IDEA Part B funds are not used to reduce the level of expenditure from state or local funds made by the LEA for the preceding fiscal year.

Monthly review of expenditure reports from federal and state/local budgets will help identify and correct costly coding errors that could lead to MOE problems. Review the Actual Expenditure by Program and Object within Function General Fund 199 records prior to the submission of the LEA Final Expenditure Report to TEA in July. Follow the format developed by Education Service Center VIII in collaboration with TEA to run specified reports and enter data on a spreadsheet that may be downloaded from the ESC VIII website. http://www.reg8.net/default.aspx?name=sped.links Identified problems can be corrected prior to submission of the final report by moving expenditures from federal budgets to state and local budgets. While this is not possible in some cases, the information is still critical in helping the LEA prevent the same mistake from occurring in the next fiscal year. The website also provides information for exceptions to the MOE requirement.

F. Budget Close-out

A budget calendar will include WCSESSA and/or special education department final timelines for purchase requisitions, vendor invoices, staff development registration fees and final end of year travel

reimbursements. Review the calendar at the beginning of the year as part of the normal back to school staff development process.

Annually review TEA timelines for budget close out changes. The federal fiscal year ends on June 30, local education agencies have 30 days after the end of the IDEA-B Formula, IDEA-B Preschool funds to liquidate all encumbrances (money obligated for a specific expenditure, such as technology or consulting). The final expenditure report is due to TEA 45 days after the end of the federal fiscal year (i.e., June 30). This means that existing department obligations (encumbrances) may be received by the WCSESSA during the 30 day period but no new obligations may be made during the 30 day period. New obligations need to wait approval of the new eGrant application. To avoid a lapse between funding cycles, submit the eGrant application early in June to allow time for approval by TEA and board approval, if required by local district policy.

The district budget office will complete or work with the special education department to prepare the final expenditure report. Budget management involving monthly review of expenditure reports should make this a seamless and effortless process.

XIV. MONITORING, TECHNICAL ASSISTANCE AND ENFORCEMENT

The Wood County SSA will work diligently toward the state performance goals / indicators. We are aware that the achievement and success of students in our schools directly impact the Texas SPP.

§300.600 State monitoring and enforcement.

(a) The TEA must--
- **(1) Monitor the implementation of this part;**
- **(2) Make determinations annually about the performance of the WCSESSA using the categories in §300.603(b)(1);**
- **(3) Enforce this part, consistent with §300.604, using appropriate enforcement mechanisms, which must include, if applicable, the enforcement mechanisms identified in §300.604(a)(1) (technical assistance), (a)(3) (conditions on funding of an LEA), (b)(2)(i) (a corrective action plan or improvement plan), (b)(2)(v) (withholding funds, in whole or in part, by the SEA), and (c)(2) (withholding funds, in whole or in part, by the SEA); and**
- **(4) Report annually on the performance of the State and WCSESSA under this part, as provided in §300.602(b)(1)(i)(A) and (b)(2).**

(b) The primary focus of the State's monitoring activities must be on—
- **(1) Improving educational results and functional outcomes for all children with disabilities; and**
- **(2) Ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.**

(c) As a part of its responsibilities under paragraph (a) of this section, the TEA must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in paragraph (d) of this section, and the indicators established by the Secretary for the TEA performance plans.

(d) The TEA must monitor the LEAs located in the State, using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:
- **(1) Provision of FAPE in the least restrictive environment.**
- **(2) State exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services as defined in §300.43 and in 20 U.S.C. 1437(a)(9).**
- **(3) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.**

(e) In exercising its monitoring responsibilities under paragraph (d) of this section, the TEA must ensure that when it identifies noncompliance with the requirements of this part by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the TEA's identification of the noncompliance.

§300.601 Texas Education Agency (TEA) performance plans and data collection.

(a) General. Not later than December 3, 2005, each State must have in place a performance plan that evaluates the State's efforts to implement the requirements and purposes of Part B of the Act, and describes how the State will improve such implementation.
- **(1) TEA must submit the State's performance plan to the Secretary for approval in accordance with the approval process described in section 616(c) of the Act.**
- **(2) TEA must review its State performance plan at least once every six years, and submit any amendments to the Secretary.**
- **(3) As part of the State performance plan, each State must establish measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in §300.600(d).**

(b) Data collection.
- **(1) TEA must collect valid and reliable information as needed to report annually to the Secretary on the indicators established by the Secretary for the State performance plans.**

(2) If the Secretary permits States to collect data on specific indicators through State monitoring or sampling, and the State collects the data through State monitoring or sampling, the State must collect data on those indicators for each LEA at least once during the period of the State performance plan.

(3) Nothing in Part B of the Act shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part B of the Act.

§300.602 TEA use of targets and reporting.

(a) General. TEA must use the targets established in the State's performance plan under §300.601 and the priority areas described in §300.600(d) to analyze the performance of the Wood County SSA.

(b) Public reporting and privacy —

(1) Public report.

(i) Subject to paragraph (b)(1)(ii) of this section, the TEA must--

(A) Report annually to the public on the performance of each LEA located in Texas on the targets in the State's performance plan as soon as practicable but no later than 120 days following the State's submission of its annual performance report to the Secretary under paragraph (b)(2) of this section; and

(B) Make each of the following items available through public means: the State's performance plan, under Sec. 300.601(a); annual performance reports, under paragraph (b)(2) of this section; and the State's annual reports on the performance of each LEA located in the State, under paragraph (b)(1)(i)(A) of this section. In doing so, the State must, at a minimum, post the plan and reports on the TEA's Web site, and distribute the plan and reports to the media and through public agencies.

(ii) If the TEA, in meeting the requirements of paragraph (b)(1)(i) of this section, collects performance data through State monitoring or sampling, the TEA must include in its report under paragraph (b)(1)(i)(A) of this section the most recently available performance data on each LEA, and the date the data were obtained.

(2) State performance report. The TEA must report annually to the Secretary on the performance of the State under the TEA's performance plan.

(3) Privacy. TEA must not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children, or where the available data are insufficient to yield statistically reliable information.

§300.603 Secretary's review and determination regarding State performance.

(a) Review. The Secretary annually reviews the State's performance report submitted pursuant to §300.602(b)(2).

(b) Determination —

(1) General. Based on the information provided by the TEA in the State's annual performance report, information obtained through monitoring visits, and any other public information made available, the Secretary determines if the State—

(i) Meets the requirements and purposes of Part B of the Act;

(ii) Needs assistance in implementing the requirements of Part B of the Act;

(iii) Needs intervention in implementing the requirements of Part B of the Act;or

(iv) Needs substantial intervention in implementing the requirements of Part B of the Act.

(2) Notice and opportunity for a hearing.

(i) For determinations made under paragraphs (b)(1)(iii) and (b)(1)(iv) of this section, the Secretary provides reasonable notice and an opportunity for a hearing on those determinations.

(ii) The hearing described in paragraph (b)(2) of this section consists of an opportunity to meet with the Assistant Secretary for Special Education and Rehabilitative Services to demonstrate why the Department should not make the determination described in paragraph (b)(1) of this section.

§300.604 Enforcement.

(a) Needs assistance. If the Secretary determines, for two consecutive years, that the Texas Education Agency (TEA) needs assistance under §300.603(b)(1)(ii) in implementing the requirements of Part B of the Act, the Secretary takes one or more of the following actions:

(1) Advises the TEA of available sources of technical assistance that may help the TEA address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and requires the State to work with appropriate entities. Such technical assistance may include—

(i) The provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the area for concern within a specified period of time;

(ii) Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;

(iii) Designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and

(iv) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under Part D of the Act, and private providers of scientifically based technical assistance.

(2) Directs the use of State-level funds under section 611(e) of the Act on the area or areas in which the State needs assistance.

(3) Identifies the State as a high-risk grantee and imposes special conditions on the State's grant under Part B of the Act.

(b) Needs intervention. If the Secretary determines, for three or more consecutive years, that a State needs intervention under §300.603(b)(1)(iii) in implementing the requirements of Part B of the Act, the following shall apply:

(1) The Secretary may take any of the actions described in paragraph (a) of this section.

(2) The Secretary takes one or more of the following actions:

(i) Requires the TEA to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within one year.

(ii) Requires the TEA to enter into a compliance agreement under section 457 of the General Education Provisions Act, as amended, 20 U.S.C. 1221 et seq. (GEPA), if the Secretary has reason to believe that the State cannot correct the problem within one year.

(iii) For each year of the determination, withholds not less than 20 percent and not more than 50 percent of the State's funds under section 611(e) of the Act, until the Secretary determines the State has sufficiently addressed the areas in which the State needs intervention.

(iv) Seeks to recover funds under section 452 of GEPA.

(v) Withholds, in whole or in part, any further payments to the State under Part B of the Act.

(vi) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(c) Needs substantial intervention. Notwithstanding paragraph (a) or (b) of this section, at any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of Part B of the Act or that there is a substantial failure to comply with any condition of an SEA's or LEA's eligibility under Part B of the Act, the Secretary takes one or more of the following actions:

(1) Recovers funds under section 452 of GEPA.

(2) Withholds, in whole or in part, any further payments to the State under Part B of the Act.

(3) Refers the case to the Office of the Inspector General at the Department of Education.

(4) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(d) Report to Congress. The Secretary reports to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 30 days of taking enforcement action pursuant to paragraph (a), (b), or (c) of this section, on the specific action taken and the reasons why enforcement action was taken.

§300.605 Withholding funds.

(a) Opportunity for hearing. Prior to withholding any funds under Part B of the Act, the Secretary provides reasonable notice and an opportunity for a hearing to the SEA involved, pursuant to the procedures in §§300.180 through 300.183.

(b) Suspension. Pending the outcome of any hearing to withhold payments under paragraph (a) of this section, the Secretary may suspend payments to a recipient, suspend the authority of the recipient to

obligate funds under Part B of the Act, or both, after the recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under Part B of the Act should not be suspended.

(c) Nature of withholding.

(1) If the Secretary determines that it is appropriate to withhold further payments under §300.604(b)(2) or (c)(2), the Secretary may determine—

(i) That the withholding will be limited to programs or projects, or portions of programs or projects, that affected the Secretary's determination under §300.603(b)(1); or

(ii) That the TEA must not make further payments under Part B of the Act to specified State agencies or LEAs that caused or were involved in the Secretary's determination under §300.603(b)(1).

(2) Until the Secretary is satisfied that the condition that caused the initial withholding has been substantially rectified—

(i) Payments to the State under Part B of the Act must be withheld in whole or in part; and

(ii) Payments by the SEA under Part B of the Act must be limited to State agencies and LEAs whose actions did not cause or were not involved in the Secretary's determination under §300.603(b)(1), as the case may be.

§300.606 Public attention.

Whenever TEA receives notice that the Secretary is proposing to take or is taking an enforcement action pursuant to Sec. 300.604, the TEA must, by means of a public notice, take such actions as may be necessary to notify the public within Texas of the pendency of an action pursuant to Sec. 300.604, including, at a minimum, by posting the notice on the TEA's Web site and distributing the notice to the media and through public agencies. (Authority: 20 U.S.C. 1416(e)(7))

§300.607 Divided State agency responsibility.

For purposes of this subpart, if responsibility for ensuring that the requirements of Part B of the Act are met with respect to children with disabilities who are convicted as adults under Texas law and incarcerated in adult prisons is assigned to a public agency other than the TEA pursuant to §300.149(d), and if the Secretary finds that the failure to comply substantially with the provisions of Part B of the Act are related to a failure by the public agency, the Secretary takes appropriate corrective action to ensure compliance with Part B of the Act, except that—

(a) Any reduction or withholding of payments to the State under §300.604 must be proportionate to the total funds allotted under section 611 of the Act to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the TEA; and

(b) Any withholding of funds under §300.604 must be limited to the specific agency responsible for the failure to comply with Part B of the Act.

§300.608 State enforcement.

(a) If TEA determines that WCSESSA is not meeting the requirements of Part B of the Act, including the targets in the State's performance plan, the TEA must prohibit the WCSESSA from reducing the WCSESSA's maintenance of effort under §300.203 for any fiscal year.

(b) Nothing in this subpart shall be construed to restrict TEA from utilizing any other authority available to it to monitor and enforce the requirements of Part B of the Act.

TAC §89.1076. Interventions and Sanctions.

The Texas Education Agency (TEA) must establish and implement a system of interventions and sanctions, in accordance with the Individuals with Disabilities Education Act, 20 United States Code, §§1400 et seq., Texas Education Code (TEC), §29.010, and TEC, Chapter 39, as necessary to ensure program effectiveness and compliance with federal and state requirements regarding the implementation of special education and related services. In accordance with TEC, §39.102, the TEA may combine any intervention and sanction. The system of interventions and sanctions will include, but not be limited to, the following: *(§39.131 changed to §39.102 June 2009)*

(1) on-site review for failure to meet program or compliance requirements;

(2) required fiscal audit of specific programs and/or of the district, paid for by the district;

(3) required submission of corrective actions, including compensatory services, paid for by the district;

(4) required technical assistance, paid for by the district;

(5) public release of program or compliance review findings;
(6) special investigation and/or follow-up verification visits;
(7) required public hearing conducted by the local school board of trustees;
(8) assignment of a special purpose monitor, conservator, or management team, paid for by the district;
(9) hearing before the commissioner of education or designee;
(10) reduction in payment or withholding of funds;
(11) lowering of the special education monitoring/compliance status and/or the accreditation rating of the district; and/or
(12) other authorized interventions and sanctions as determined by the commissioner.

§300.120 Monitoring activities.

(a) The TEA must carry out activities to ensure that §300.114 *(LRE activities)* **is implemented by each public agency.**

(b) If there is evidence that a public agency makes placements that are inconsistent with §300.114, the TEA must—

(1) Review the public agencies justification for its actions; and

(2) Assist in planning and implementing any necessary corrective action. Authority: 20 U.S.C. 1412(a)(5))

TEC §29.005

Section 1. is amended by adding Subsection (f) to read as follows:

(f) The written statement of a student's individualized education program may be required to include only information included in the model form developed under Section 29.0051(a).

Section 2. Subchapter A, Chapter 29, Education Code, is amended by adding Section 29.0051 to read as follows:

§29.0051. MODEL FORM.

(a) The agency shall develop a model form for use in developing an individualized education program under Section 29.005(b). The form must be clear, concise, well organized, and understandable to parents and educators and may include only:
(1) the information included in the model form developed under 20 U.S.C. Section 1417(e)(1);
(2) a state-imposed requirement relevant to an individualized education program not required under federal law; and
(3) the requirements identified under 20 U.S.C. Section 1407(a)(2).

(b) The agency shall post on the agency's Internet website the form developed under Subsection (a).

(c) A school district may use the form developed under Subsection (a) to comply with the requirements for an individualized education program under 20 U.S.C. Section 1414(d).

XV. TEA CORRECTIVE ACTION PLAN

TEA CORRECTIVE ACTION PLAN

Below are listed the four Corrective Actions that are specific to the local education agency effective beginning 2018. Required numbers from the TEA Corrective Action Plan submitted to OSEP include: 1b, 2a, 2c, and 3c.

Corrective Action 1.b. TEA must ensure that LEAs annually confirm that their local special education policies and practices are in compliance with federal and state requirements.

- LEAs will be required to submit assurances as part of the process for obtaining their IDEA formula and discretionary funds. These assurances will clearly convey that the LEA's special education policies, procedures, and programs are consistent with state and federal special education.
- The Legal Framework for the Child-Centered Special Education Process produced by ESC Region 18, through a grant from TEA, has multiple resources available to assist LEAs that would like to review their local special education policies before submitting these assurances. LEAs may find the Timeline Decision Tree particularly useful when reviewing their child find and evaluation process.
- To be completed Summer 2018 through eGrants.

Corrective Action 2.a. TEA must ensure that LEAs annually distribute information to every enrolled student's family regarding the following:

- Child find and FAPE requirements under IDEA
- Parent and students' rights under IDEA
- Contact information necessary to request an initial evaluation for a student they suspect of having a disability

LEA's must review the revised Student Handbook Statement and assure that they have provided this revised information to the families of each student in the LEA by including the information in the student handbook or by another means as required in the Texas Education Code. This is to be completed by November 1, 2018.

Corrective Action 2.c. The WCSESSA will collect and retain requests for evaluation data that includes:

- The reason for the request.
- Whether additional services are needed.
- Including the timeline for implementation.

Data required to be collected include the:

- Total number of requests for evaluation made during the 2018-19 school year by either a parent or a public agency beginning on July 1, 2018 through June 30, 2019.
- Total number of requests made in which the reason for the request indicates a claim that the child should have been referred for an initial evaluation prior to the 2018-19 school year.

Data required to be collected include the:

- Total number of children found eligible and the Admission Review and Dismissal (ARD) committee determines additional services are needed, taking into consideration supports and services previously provided..
- Subtotal number for types of services to include four (4) categories for reporting; related services, supplementary aids and services, program modification, and supports for personnel (students may count in multiple categories if identified in the IEP).
- Subtotal number for timelines for implementation to include two (2) categories for reporting; up to six (6) months, or more than six (6) months up to one (1) year (students may count in multiple categories if counted in multiple types of services described here).

Corrective Action 3.c. TEA must ensure that the WCSESSA share resources with the parents of children suspected of having a disability that describes the differences between response to intervention (RtI), the state dyslexia program (for dyslexia or dyslexia-related needs), Section 504, and special education.

- TEA will provide WCSESSA with the resources described in this corrective action by September 1, 2018. WCSESSA is required to assure that they have shared the resources with the familieis of all children in the LEA suspected of having a disability. sped@tea.Texas.gov, 512.463.9414.

XVI. SHARED SERVICE ARRANGEMENTS

Shared Service Arrangements

TEC §29.007. Shared Services Arrangements. School districts may enter into a written contract to jointly operate their special education programs. The contract must be approved by the commissioner. Funds to which the cooperating districts are entitled may be allocated to the districts jointly as shared services arrangement units or shared services arrangement funds in accordance with the shared services arrangement districts' agreement.

TAC §89.1075. General Program Requirements and Local District Procedures.

(f) School districts that jointly operate their special education programs as a shared services arrangement, in accordance with TEC, §29.007, must do so in accordance with procedures developed by the Texas Education Agency (TEA).

XVII. CHARTER SCHOOLS

§300.7 Charter school.
Charter school has the meaning given the term in section 4310(2) of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 et seq. (ESEA). (Authority: 20 U.S.C. 7221i(2)) [71 FR 46753, Aug. 14, 2006, as amended at 82 FR 29759, June 30, 2017]

§300.209 Treatment of charter schools and their students.
(a) Rights of children with disabilities. Children with disabilities who attend public charter schools and their parents retain all rights under this part.
(b) Charter schools that are public schools of the LEA.
(1) In carrying out Part B of the Act and these regulations with respect to charter schools that are public schools of the LEA, the LEA must–-
(i) Serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools; and
(ii) Provides funds under Part B of the Act to those charter schools--
(A) On the same basis as the LEA provides funds to the LEA's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and
(B) At the same time as the LEA distributes other Federal funds to the LEA's other public schools, consistent with the State's charter school law.
(2) If the public charter school is a school of an LEA that receives funding under §300.705 and includes other public schools--
(i) The LEA is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity; and
(ii) The LEA must meet the requirements of paragraph (b)(1) of this section.
(c) Public charter schools that are LEAs. If the public charter school is an LEA, consistent with §300.28, that receives funding under §300.705, that charter school is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity.
(d) Public charter schools that are not an LEA or a school that is part of an LEA.
(1) If the public charter school is not an LEA receiving funding under §300.705, or a school that is part of an LEA receiving funding under §300.705, the SEA is responsible for ensuring that the requirements of this part are met.
(2) Paragraph (d)(1) of this section does not preclude a State from assigning initial responsibility for ensuring the requirements of this part are met to another entity. However, the SEA must maintain the ultimate responsibility for ensuring compliance with this part, consistent with §300.149.