

# **A Guide to the Admission, Review and Dismissal Process**



This page  
intentionally  
left blank



**Dear Parent,**

The **IDEA 2004** is the Individuals with Disabilities Education Act, the federal law that ensures students with disabilities receive free appropriate public education in the least restrictive environment. A critical component of this law promotes parent's participation in their child's education.

This resource guide is written for you, as the parent of a child who may be eligible for special education supports and services. The purpose of this guide is to:

- explain how an individualized education program is developed for your child,
- explain your rights and responsibilities in the process, and
- provide information that will help you effectively participate in the admission, review, and dismissal (ARD) committee meeting.

With this knowledge, you will be prepared to take an active role in your child's education. The content and suggestions included in this guide will help you and your child benefit from a cooperative support system in a partnership between the home and school. For consistency, the word child is used throughout this document to refer to a student of any age.

It is important for you to note that this document will be updated as changes to the federal regulations, state law and/or Commissioner's Rules occur. A virtual document version will be updated quarterly. The virtual document will be located on the Region 18 Education Service Center web page on the Legal Framework for the Child-Centered Process in Texas, IDEA 2004, at [www.esc18.net](http://www.esc18.net). The printable version of this guide will always denote a print date. You can download the most current version of this document on the Legal Framework Resource Page at [www.esc18.net](http://www.esc18.net).



## **Acknowledgements**

This document was developed by the Statewide Leadership for the Legal Framework Project Team in collaboration with the Texas Education Agency in response to the requirement in the Texas Education Code (TEC) § 26.0081, Right to Information Concerning Special Education.

Stakeholders who provided invaluable input into this document include parents, the Family-to-Family Network, the Texas Continuous Improvement Parent Planning Committee, and the Statewide Leadership for Parent Involvement Network. Thank you to each individual contributor.

## Table of Contents

<b>Parent Letter</b> .....	<b>i</b>
<b>Acknowledgements</b> .....	<b>ii</b>
<b>Introduction</b> .....	<b>1</b>
Early Childhood Intervention.....	<b>1</b>
<b>How to Get Help</b> .....	<b>2</b>
Response to Intervention.....	<b>3</b>
<b>Referral for a Full and Individual Evaluation</b> .....	<b>4</b>
<b>Prior Written Notice</b> .....	<b>5</b>
<b>Parental Consent</b> .....	<b>6</b>
Consent for Initial Evaluation.....	<b>6</b>
Consent for Initial Provision of Services.....	<b>6</b>
Consent for Reevaluation.....	<b>7</b>
<b>Full and Individual Evaluation</b> .....	<b>7</b>
Eligibility.....	<b>8</b>
Reevaluation.....	<b>8</b>
Review of Existing Evaluation Data.....	<b>8</b>
Independent Educational Evaluation.....	<b>9</b>
<b>Admission, Review and Dismissal Committee</b> .....	<b>9</b>
Amendment to the Individualized Education Program Without a Meeting.....	<b>10</b>
Membership.....	<b>10</b>
Adult Student.....	<b>11</b>
Excusing Members from Attending the Meeting.....	<b>11</b>
Scheduling the Meeting.....	<b>12</b>
Nonconsensus.....	<b>12</b>
<b>Individualized Education Program</b> .....	<b>13</b>
Present Levels.....	<b>13</b>
Annual Goals.....	<b>14</b>
Statewide Assessment.....	<b>14</b>
Special Education, Related Services, Supplementary Aids and Services.....	<b>15</b>
Supplementary Areas to be Addressed for Children with Autism.....	<b>16</b>
Extended School Year.....	<b>16</b>
Transition.....	<b>17</b>
Placement.....	<b>18</b>

Graduation .....	18
<b>Discipline</b> .....	<b>19</b>
Some General Principles .....	19
Removal from the Individualized Education Program Placement.....	20
The First Ten Days of Removal .....	20
Beyond the First Ten Days .....	20
Change of Placement .....	21
Manifestation Determination .....	21
When Conduct Is a Manifestation .....	22
When Conduct Is Not a Manifestation .....	22
Special Circumstances.....	23
Expedited Due Process Hearing .....	23
Child Not Yet Eligible.....	23
<b>Confinement, Seclusion, Restraint and Time-Out</b> .....	<b>24</b>
Confinement and Seclusion .....	24
Restraint .....	24
Time-Out .....	25
<b>Procedural Safeguards</b> .....	<b>25</b>
<b>Dispute Resolution</b> .....	<b>26</b>
Mediation .....	27
Complaint.....	27
Due Process Hearing .....	28
Stay-Put.....	29
Resolution Period .....	29
Due Process Hearing Procedures.....	29
<b>Conclusion</b> .....	<b>30</b>
<b>Acronym Reference List</b> .....	<b>Appendix A-1</b>
<b>Glossary</b> .....	<b>Appendix B-1</b>
<b>Timeline</b> .....	<b>Appendix C-1</b>
<b>Internet Resources</b> .....	<b>Appendix D-1</b>

## A GUIDE TO THE ADMISSION, REVIEW AND DISMISSAL PROCESS



### Introduction

The purpose of this guide is to help parents understand the special education process including early intervention activities, admission to special education, development and periodic review of a child's Individualized Education Program (IEP), and dismissal from special education.

Children are the future of Texas. Partnering schools and parents leads to positive results for children. When both work together, the success is greater than either one working alone. There are many opportunities for learning in everyday life. The attitude of the parent about school and education is the most important element in a child's academic success.

Children whose parent is involved usually have higher grades and test scores. These children complete homework on a more regular basis and are involved in more challenging school programs. They usually have higher graduation rates and are more likely to enroll in post-high school programs than those whose parent is not involved.

The benefits do not just apply to grades and test scores. The benefits have a positive effect on children's attitudes and behaviors. Children with a parent who is involved in the education process have better attendance and greater self-esteem and, in general, do better in school. These children are less likely to use alcohol or engage in violent or other antisocial behavior. Another benefit is that the children are able to make better transitions after high school, maintain high quality work and develop realistic goals for the future.

The Individuals with Disabilities Education Act (IDEA) as amended by Congress in 2004 is the federal law that governs the special education process. The term *special education* means specially designed instruction to meet the unique needs of a child with a disability. Under the IDEA, parents are given a large measure of participation at every stage of the process. It is the goal of the Texas Education Agency (TEA) and each local school district, referred to as Local Education Agency (LEA), that with better understanding, parents will be able to fully participate in the decision-making process regarding the provision of an appropriate education to their child.

### ★ Early Childhood Intervention (ECI)

When a very young child begins to demonstrate problems with meeting developmental milestones, the IDEA addresses early intervention with the family and the child who may have a disability. Sometimes, with a little assistance early on, the infant or toddler who is late in meeting developmental goals may catch up with peers.

In Texas, there is an agency that helps infants and toddlers who are birth through two years of age and have developmental delays. The



program is called Early Childhood Intervention (ECI). There are services for qualifying infants and toddlers and their families. Services include screening and evaluation, programming, service coordination and transition services, as needed.

Before a toddler receiving ECI turns three years old, a meeting will be set up to help the family make the transition from ECI services to special education services, if appropriate. Not all children served by the ECI program will qualify for special education services. If the child does qualify, services must be made available to the child on the third birthday.



### **How to Get Help for the School-aged Child Before an Evaluation for Special Education Becomes Necessary**

A parent with concerns about a child's learning or behavior is encouraged to contact the child's teacher or principal. The first step is for concerns to be addressed by the teacher, the parent and the child. If this step is unsuccessful, a parent should ask the child's teacher, principal or counselor about making a referral to the campus-based student support team.

Although different districts have different names for these campus-based support teams, most schools have a team of teachers and other personnel who meet regularly to address any learning or behavioral concerns. It is the goal of the school and these teams to identify struggling learners early in order to improve their educational outcomes. This is different from a special education referral. It is a way to intervene early.

Referral of a child for an initial evaluation for possible special education services must be a part of the school's overall general education referral or screening system. In Texas, prior to referral for special education evaluation, State law requires that the child be considered for all support services available to all children. These services include tutorial, remedial and compensatory services, but are not limited to these options.

When a child is referred to the campus-based support team, the team will meet to develop a program of intervention in the general education environment. To assist in developing this program of intervention, parents and teachers are asked to provide more specific information about the child to the team.

There are many intervention programs within general education to address the needs of struggling learners. For example, there are programs for children with dyslexia. For children who are at-risk or fail to pass the statewide assessment, there are accelerated instruction and intensive programs of instruction. Some schools receive federal funds for programs designed to meet the needs of struggling learners.

Beginning in middle school or junior high, any child (including a child receiving special education services) who does not pass the statewide assessment or fails to meet credit requirements for graduation in a four-year period, is entitled to a personal graduation plan. The plan must address the parent's participation in the graduation plan. When the school develops the plan, school staff must consider the

parent's educational expectations for the child. The plan that is developed must include an intensive program of instruction.

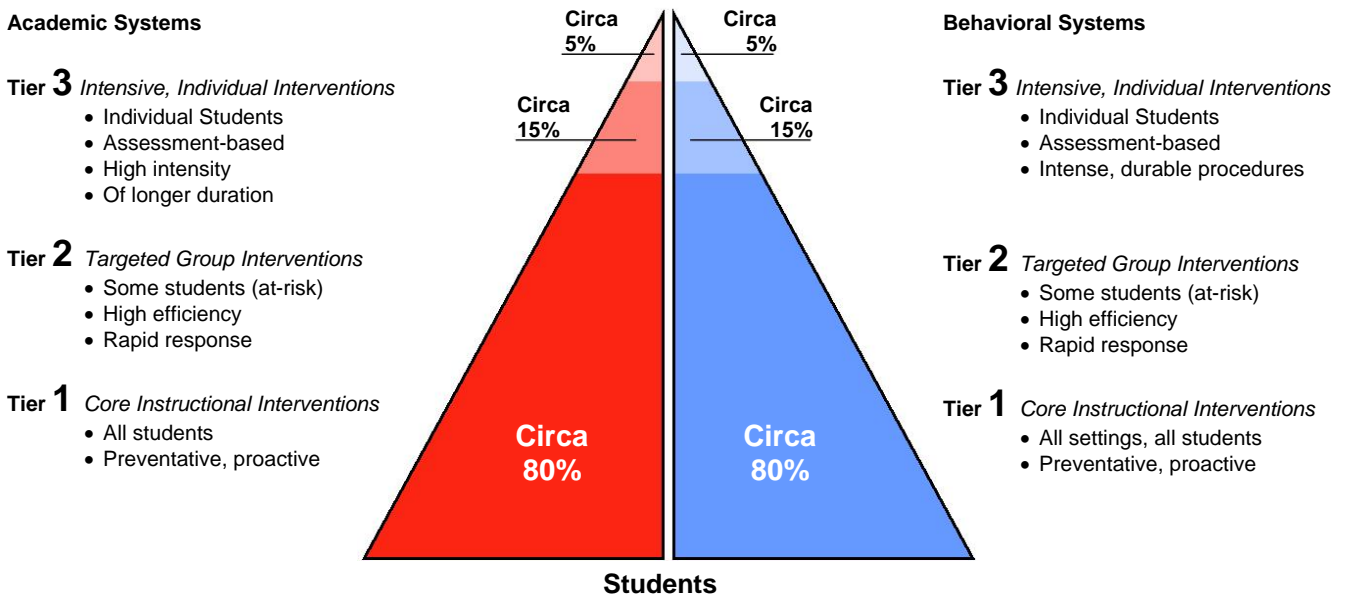
The campus-based support team may meet more than once to address a child's needs and monitor the child's progress. The school will keep the parent informed of the efforts being made and the results of measures used to help the child.

### ★ Response to Intervention (RTI): A Process of Early Intervention

Many school districts and campuses have begun implementing activities associated with RTI. RTI activities are expected to have a positive effect on schools across the state. RTI is a model that addresses the needs of all children through a continuum of services, which provide:

- high-quality instruction and tiered intervention strategies aligned with individual student needs;
- frequent monitoring of progress to make results-based academic or behavioral decisions; and
- application of child response data to important educational decisions (such as those regarding placement, intervention, curriculum and instructional goals and methodologies).

In a RTI process, it is anticipated that 80 percent of all children will be successful in Tier I high-quality general education instruction in the core curriculum.



*Response to Intervention: NASDSE and CASE White Paper on RTI*  
(May 2006), available at:

[www.nasdse.org/documents/RTIAnAdministratorsPerspective1-06.pdf](http://www.nasdse.org/documents/RTIAnAdministratorsPerspective1-06.pdf)

Children who are at-risk are identified for Tier II targeted interventions through screening measures that indicate a child is having problems in academics or with behavior. When a child is identified as at-risk through screening measures, the campus-based support team may collect additional

information from the teachers, the parent, observations, disciplinary records, or other data. This process of screening and identification may not look the same in every school district.

The goal of any Response to Intervention (RTI) process is to identify children who are at-risk and intervene early. The targeted interventions a child receives in Tier II are those that have been proven successful in similar cases. The school will implement these interventions with fidelity over time. A child's progress will be regularly monitored in Tier II.

The targeted interventions will be continually adjusted based on progress monitoring until the child meets with success. Children who do not respond to these targeted interventions within a reasonable period of time as suggested by research are referred for Tier III interventions. Tier III interventions are more intensive and individualized than Tier II interventions.

For more information on RTI,  
Click here or go to the website below:  
[http://www.nclld.org/images/stories/downloads/parent\\_center/rti\\_final.pdf](http://www.nclld.org/images/stories/downloads/parent_center/rti_final.pdf)



### **Referral for a Full and Individual Evaluation (FIE) for Special Education Services**

If a child continues to experience difficulty in the general classroom after the provision of interventions, school personnel may refer the child for a FIE for special education services. A referral for a FIE for special education services may be initiated by school personnel, the child's parents or legal guardian, or another person involved in the education or care of the child. If a parent makes a referral for a FIE for special education services, and the school decides an evaluation is not needed, the school must give prior written notice to the parent of its refusal to evaluate.

A parent may directly ask for a FIE for special education services. A parent may begin this process of referral by indicating in writing to the teacher or administrator that he or she believes that the child is in need of special education services.

A school district has a duty to make a referral for a FIE for special education services anytime it suspects that a child has a disability and a need for special education services under the Individuals with Disabilities Education Act (IDEA). If targeted interventions were tried and the child has not progressed as expected, or the child requires services beyond what is available in general education, the child may have a disability and a need for special education services.



---

---



---

---

## Prior Written Notice

Prior written notice involves informing a parent in writing of a proposed action of the school before the school actually takes the action, or informing a parent in writing of the school's refusal to take an action requested by the parent.

The Individuals with Disabilities Education Act (IDEA) requires that prior written notice be given a reasonable time (at least 5 school days) before the school proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a Free Appropriate Public Education (FAPE) to the child. Prior written notice is also required when the school refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a FAPE to the child.

The prior written notice must include the following information:

- a description of the action proposed or refused,
- a description of any testing procedures the school is going to use, if the proposed action is an evaluation,
- an explanation of why the action is being proposed or refused,
- a description of each evaluation, assessment, record or report used to make the decision,
- a statement that the parents of a child with a disability have protections through the IDEA procedural safeguards,
- procedures for getting a copy of the IDEA Notice of Procedural Safeguards,
- other sources for parents to contact for help in understanding the IDEA,
- a description of other options considered and why rejected, and
- a description of other factors relevant to the proposal or refusal.

The school must give prior written notice to the parent of the child when the school proposes to conduct a Full and Individual Evaluation (FIE) for possible special education services. If a parent asks for a FIE for possible special education services, and the school decides an evaluation is not needed, or proposes a delay in an initial evaluation beyond the 60 calendar day **timeline** for an initial evaluation, the school must give prior written notice to the parent of its refusal to evaluate.

Reasons for refusing a FIE may include that the school does not suspect that the child has a disability or a need for special education services. The school may want to give the interventions within general education more time to work.

Examples of other times when the school must give prior written notice includes when the school:

- proposes to reevaluate the child,
- proposes to conduct an Admission, Review and Dismissal (ARD) committee meeting, along with an invitation to the parent to attend the meeting,
- proposes to change the child's Individualized Education Program (IEP) and the parent disagrees,
- refuses to make requested changes to the child's IEP,

- proposes to change the child's placement and the parent disagrees,
- refuses to make a requested change to the child's placement,
- proposes graduation for the child.



## **Parental Consent**

There are certain activities under the Individuals with Disabilities Education Act (IDEA) that cannot take place unless the school obtains consent from the parent. When seeking parental consent, the school must fully inform the parent of all the information needed to be able to make a good decision including a description of the proposed activity. The information given to the parent must be in the parent's native language or other mode of communication. If there are records to be released, the school must list the records and to whom they will be released.

When a parent gives consent, it means that the parent understands and agrees in writing for the school to carry out the activity for which consent is sought. It is important that the parent understand that the consent is voluntary and may be revoked at anytime prior to the activity taking place. However, if a parent revokes consent for an activity, it is not retroactive.



### **Consent for Initial Evaluation**

The school must ask for consent from the parent to conduct a full and individual initial evaluation for possible special education services. The school may not evaluate a child for special education services without parental consent. Informed parental consent means that the parent understands and agrees in writing to allow the school to test the child.

If the parent does not consent to the initial evaluation, the school district may, but is not required to, ask for mediation or request a due process hearing to evaluate the child. If the school district decides not to ask for mediation or to request a due process hearing to override the parent's refusal to consent for evaluation of the child, the school district does not violate Child Find requirements under the IDEA.



### **Consent for the Initial Provision of Services**

When a parent consents to a full and individual initial evaluation, it does not mean that the parent agrees to the child receiving special education and related services. Parental consent to initiate special education and related services must be separately obtained from the parent if it is determined through the process discussed below that the child qualifies for special education and related services.

The school must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child. No special education and related services will be provided if the parent refuses consent. The school district may not ask for mediation or

request a due process hearing to require the child to receive special education services when the parent has declined special education services. The school district will not be considered in violation of the requirement to make available a Free Appropriate Public Education (FAPE) to the child when the parent refuses consent for the initial provision of services.

### **Consent for Reevaluation**

Once a child begins receiving special education and related services, periodic reevaluations are required. The school must make reasonable efforts to obtain parental consent for a reevaluation. If a parent fails to respond despite reasonable efforts, the school may conduct a reevaluation without parental consent.

If the parent refuses consent to reevaluate the child, the school district may, but is not required to, ask for mediation or request a due process hearing to override the parent's lack of consent for reevaluation. The school district does not violate its Child Find obligation or its obligation to evaluate the child if the district does not ask for mediation or request a due process hearing.



### **Full and Individual Evaluation (FIE)**

Once consent is given for a FIE for possible special education services, the school will conduct a full and individual initial evaluation of the child. The child must be evaluated in all areas of suspected disability. The child between the ages of three through twenty-one (except as noted) must meet the criteria for one or more of the disability categories listed below:

- auditory impairment — from birth
- autism
- deaf-blindness — from birth
- emotional disturbance
- mental retardation
- multiple disabilities
- noncategorical early childhood — ages 3 - 5
- orthopedic impairment
- other health impairment
- specific learning disability
- speech or language impairment
- traumatic brain injury, and
- visual impairment (including blindness) — from birth

The evaluation must be comprehensive enough to determine whether the child is a child with a disability and needs special education and related services. The evaluation tools and strategies must be technically sound. The tools and how they are used must not be biased in regard to race, culture, language or disability.

The materials and procedures must be administered in the language and form most likely to provide accurate information on what the child knows and can do. The full and individual initial evaluation and the resulting report must be completed no later than 60 calendar days from the day the school received the written consent from the parent.

### **Eligibility**

There is a two-part test for eligibility: (1) the child must have a disability, and (2) as a result of the disability, needs special education services to benefit from education. In Texas, an Admission, Review and Dismissal (ARD) committee makes decisions about eligibility. The parent is a member of the committee. Within 30 calendar days of completing the full and individual initial evaluation, the ARD committee must meet to review the written report and determine whether the child is eligible for special education services. A copy of the evaluation report must be given to the parent at no cost.

The ARD committee must decide whether the child has a disability. Not all struggling learners have a disability. If the child's low achievement is primarily from a lack of appropriate instruction in reading or math, or due to Limited English Proficiency (LEP), the child is not eligible for special education services. A child may still need some special help. In these situations, the campus-based support team may meet and recommend other services or programs in general education to help the child. In a Response to Intervention (RTI) process, the campus-based support team may recommend additional Tier II services or Tier III services available to children who are not disabled.

If the evaluation shows that the child has a disability, the ARD committee must also decide whether the child needs special education services. Not all children with disabilities need special education services. A child with a disability who does not need special education services is not eligible for special education.

### **Reevaluation**

For a child who qualifies and is receiving special education services, unless the parent and the school agree otherwise, a reevaluation of the child's needs must be done at least every three years. No more than one reevaluation may occur within a year unless the school and the parent agree.

### **Review of Existing Evaluation Data (REED)**

A REED must take place as part of an initial evaluation, if appropriate, and as part of any reevaluation of a child under the Individuals with Disabilities Education Act (IDEA). The REED must be conducted by the members of the ARD committee including the parent, but it does not have to take place in a meeting. The members must review existing evaluation data about the child, including information provided by the parent, to determine the scope of the evaluation.

Based on the Review of Existing Evaluation Data (REED), the members must decide what additional assessment, if any, is needed to determine if the child has or continues to have a disability and a need for special education services. If the child has already been receiving special education and related services, the members decide what additional assessment, if any, is needed to decide whether additions or modifications will be made to the child's special education and related services.

The members must also decide what additional assessment, if any, is needed to determine the present levels of achievement and related developmental needs of the child. Parental consent is not required for a REED.

If the members decide that additional assessment is not needed for the child to be fully evaluated, the reasons for this decision must be explained to the parent. After explaining the reasons why the members have concluded that existing evaluation data are sufficient, the school does not have to conduct a new assessment to complete a required evaluation unless the parent requests the school to do so.

### **Independent Educational Evaluation (IEE)**

A parent who disagrees with an evaluation by the school district may request an IEE at school district expense. A parent is entitled to only one IEE at public expense each time the school conducts an evaluation. The IEE must meet school district criteria.

When a parent requests an IEE at school district expense, the school must either pay for this evaluation or file a request for a due process hearing. The school does not have to pay for the IEE if a hearing officer determines that the school's evaluation is appropriate or the parent's requested IEE does not meet reasonable school district criteria.

Upon request for an IEE, the school must give the parent information about where an IEE may be obtained. The school district must also give the parent a copy of the school district's criteria for IEEs. The criteria will likely include the location of the evaluation and the qualifications of the examiner. Whether or not the school district pays for the IEE, the Admission, Review and Dismissal (ARD) committee must consider any individual educational evaluation that meets the district criteria.



### **Admission, Review and Dismissal (ARD) Committee**

The ARD committee must meet at least once a year to review the child's Individualized Education Program (IEP) and determine whether the annual goals are being met.

The ARD committee may meet more often than annually to revise the child's IEP, as appropriate, to address:

- any lack of expected progress toward the annual goals and in the general curriculum,
- the results of any reevaluation,
- information about the child provided to, or by, the parents, and
- anticipated needs of the child, or
- other matters.

To the extent possible, schools are encouraged to combine reevaluation meetings with other Admission, Review and Dismissal (ARD) committee meetings for the child. A parent may request an ARD committee meeting at any time to discuss educational concerns such as placement, Individualized Education Program (IEP) goals and objectives, and the extent of services being provided to the child. The school must either grant a parent's request to have a meeting or contact the Texas Education Agency (TEA) to ask for assistance through mediation.

The parent is encouraged to conference informally with school personnel regarding the child's needs at any time the parent has questions or concerns. A parent may ask for a meeting to address specific concerns about the child's special education services at a mutually agreeable time.

### **Amendment to the Individualized Education Program (IEP) Without a Meeting**

After the annual ARD committee meeting has taken place, the parent and school may agree to make changes to the IEP without a meeting. Changes to eligibility determination, changes in placement, and manifestation determination review must, however, be made by the ARD Committee.

The changes must be agreed upon by the parent and school. There must be a written document reflecting the agreed upon changes. Upon request, the parent must be provided with a copy of the revised IEP with the amendments incorporated.

### **Membership**

The ARD committee members include the following:

- the parent,
- at least one regular education teacher of the child,
- at least one special education teacher or provider of the child,
- a representative of the district,
- a person who can interpret the instructional implications of the evaluation results,
- if appropriate, the student,
- other individuals who have knowledge or special expertise regarding the child and are invited by either the school or the parent, and
- if applicable:
  - a certified teacher for the child with an Auditory Impairment (AI),
  - a certified teacher for the child with a Visual Impairment (VI),
  - a Career and Technology Education (CATE) representative for the child who is being considered for initial or continued placement, or

- o a Language Proficiency Assessment Committee (LPAC) representative for a child who is a child with Limited English Proficiency (LEP).

### **Adult Student**

When a child with a disability reaches the age of 18, both the child and the parent must be notified that rights have transferred. The child and the parent must be provided contact information to use in obtaining additional information. All rights accorded to parents under the Individuals with Disabilities Education Act (IDEA) transfer when the child reaches the age of 18 except the right to notice. All notices required by IDEA must be given to both the parent and adult student.

Although the parent will continue to receive notices of Admission, Review and Dismissal (ARD) committee meetings, these notices are not an invitation to the parent to attend. The adult student or the school may invite the parent as a person with specialized knowledge and expertise. However, if the school wishes to invite the parent, the adult student must give permission for the parent to attend.

### **Excusing Members from Attending the Meeting**

The regular education teacher, the special education teacher, the representative of the school district, and the evaluation person may be excused from attending part or all of the ARD committee meeting when the person's attendance is not necessary, because the person's area of the curriculum or related service is not being modified or discussed in the meeting. Excusing one of these members from the meeting can only occur when:

- the parent and the district agree,
- the agreement is in writing, and
- the parties agree that the person's area of the curriculum or related services is not being changed or discussed in the meeting.

The regular education teacher, the special education teacher, the representative of the school district, and the evaluation person may be excused from attending the ARD committee meeting, if the person's area of the curriculum or related service is being changed or discussed in the meeting when:

- the parent and the district agree,
- the parent's consent is in writing,
- the person being excused submits written input into the development of the Individualized Education Program (IEP) to the parent and the rest of the ARD committee, and
- the written input is submitted before the meeting.

Excusal provides additional flexibility to parents in scheduling ARD committee meetings.

## **Scheduling the Meeting**

The school must invite the parent of the child to each Admission, Review and Dismissal (ARD) committee meeting and make efforts to ensure one or both parent's participation. Written notice of the meeting must be given to the parent at least five school days before the meeting, unless the parent agrees otherwise. The written notice must include the purpose, time, and location of the meeting and list representatives attending the meeting.

The ARD committee meeting must be at a time and place agreeable to the parent and the school. If the time or date the school proposes is not convenient for the parent, the school must make reasonable efforts to find a time that the parent is able to meet. If neither parent can attend the meeting, the parent may participate through alternative means such as through telephone or videoconferencing. If the school is unable to convince the parent to attend, then the school can conduct the meeting without the parent.

## **Nonconsensus**

A decision of the ARD committee concerning the required elements of the IEP must be made by mutual agreement of the required members if possible. This mutual agreement is called consensus. The ARD committee should work toward consensus, but the school district has the ultimate responsibility to ensure that the Individualized Education Program (IEP) includes the services that the child needs in order to receive a Free Appropriate Public Education (FAPE). It is not appropriate to make ARD committee decisions based upon a majority "vote." The members participating in the meeting will be asked to sign the record of the meeting and indicate whether they agree or disagree with the committee's decisions. If there is disagreement, the record of the meeting must indicate the basis for any disagreement. Members who disagree are given the opportunity to write their own statements.

When the parent disagrees with the decisions of the ARD committee, the parent will be offered a single opportunity to have the committee recess for a period of time not to exceed ten school days. However, a school is not required to offer a recess when the child's presence on the campus presents a danger, the child has committed an expellable offense, or the child has committed an offense which may lead to a placement in an Alternative Education Program (AEP). If the parent accepts the recess, before recessing, the members are to determine by mutual agreement the date, time, and place for reconvening the meeting.

During a recess, the members are encouraged to consider alternatives, gather additional information, prepare further documentation, and seek out additional resource persons to aid in resolving the disagreement. If the ARD committee meets again and the parent continues to disagree, unless the disagreement involves the initial provision of services for which consent is required, the school shall implement the IEP, which the school has decided is appropriate for the child. When a school implements a program

with which the parent disagrees, the school shall provide prior written notice that it will implement the Individualized Education Program (IEP).

The Admission, Review and Dismissal (ARD) committee may recess for reasons other than failure to reach agreement about all required elements of the IEP.



## **Individualized Education Program (IEP)**

For the child who qualifies under the Individuals with Disabilities Education Act (IDEA), the school is required to provide a Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE). This is accomplished through the development and implementation of an IEP. The ARD committee develops the IEP.

In developing of the IEP, there are several things the ARD committee must consider, including:

- strengths of the child,
- parent concerns for enhancing the education of the child,
- results of the most recent evaluation of the child, and
- academic, developmental and functional needs of the child.

In addition, the ARD committee must address special factors for some children, as follows:

- consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior when a child's behavior impedes learning;
- consider the language needs of the child as those needs relate to the child's IEP when a child has Limited English Proficiency (LEP);
- provide for instruction in Braille and the use of Braille unless the committee determines that instruction in Braille or the use of Braille is not appropriate for the child when a child is blind or visually impaired;
- consider the communication needs of the child, and for the 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
- consider whether the child needs Assistive Technology (AT) devices and services.

### **Present Levels**

The IEP must contain a statement of present levels of academic achievement and functional performance of the child. This statement must include how the disability affects involvement and progress in the general curriculum. If the child is a preschool child, the statement must explain how the disability affects participation in activities appropriate to the age of the child.

## ★ Annual Goals

The Individualized Education Program (IEP) must contain measurable annual goals designed to meet the child's needs that result from the disability so that the child can be involved and progress in the general curriculum. These goals must also address other educational needs that result from the child's disability. The IEP must describe how the child's progress towards the annual goals will be measured as well as when the reports of the child's progress will be provided to the parent.

## ★ Statewide Assessment

Children in Texas, in grades 3-11, participate in statewide assessment. Testing is based on the State curriculum called the Texas Essential Knowledge and Skills (TEKS). Statewide assessment covers reading, math, writing, science and social studies. The Admission, Review and Dismissal (ARD) committee decides how a child with a disability will participate in the statewide assessment. The IEP must contain a statement of appropriate accommodations.

For further information on accommodations, please go to the following website:

<http://www.tea.state.tx.us/student.assessment/admin/sdaa/ardtrain/phase2/index.html>

The committee's decision regarding how to test the child is based on the child's needs related to the disability. The choices the committee will have are as follows:

- general assessment known as the Texas Assessment of Knowledge and Skills (TAKS),
- general assessment known as the TAKS with allowable accommodations,
- alternate assessment based on grade-level achievement standards known as the Texas Assessment of Knowledge and Skills—Inclusive (TAKS-I),
- alternate assessment based on modified achievement standards currently being developed by the State for children with persistent academic disabilities who are not likely to reach grade level achievement because of their disability in the same timeframe as students without disabilities, but who will make significant progress, and
- alternate assessment based on alternate achievement standards known as the Texas Assessment of Knowledge and Skills—Alternate (TAKS-Alt), for children with the most significant cognitive disabilities.

The ARD committee must provide a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments. The ARD committee must provide a statement of why the child cannot participate in the regular assessment, if the committee determines the child must take an alternate assessment on a particular State or district-wide assessment. In addition, the Admission, Review and

Dismissal (ARD) committee must provide a statement of why the particular alternate assessment selected is appropriate for the child.

For those children who take alternate assessments judged against modified or alternate achievement standards, the Individualized Education Program (IEP) must contain a description of benchmarks or short-term objectives as part of the child's annual goals. If the child does not meet the expectations set by the ARD committee on the statewide assessment, the IEP must include a statement regarding how the student will participate in an accelerated instruction program.



### ★ **Special Education, Related Services, Supplementary Aids and Services**

The ARD committee decides what services are needed to:

- enable the child to advance appropriately toward attaining the annual goals,
- be involved and make progress in the general curriculum (including participation in extracurricular and nonacademic activities), and
- be educated and participate with nondisabled children.

The term *special education* means specially designed instruction to meet the unique needs of a child with a disability. *Specially designed instruction* means adapting, to the needs of a child, the content, methodology or delivery of instruction. The instruction is adapted as needed to address the child's unique needs related to the child's disability and to ensure access to the general curriculum.

The term *related services* means transportation, and such developmental, corrective, and other supportive services as may be required to assist a child with a disability to benefit from special education. This decision of the ARD committee is based on an evaluation of the child's needs. It is an individualized decision and not a "one size fits all" decision.

There is no exhaustive list of related services. Related services may include, for example, audiology services, interpreting services, psychological services, and physical and occupational therapy.

Medical services for diagnostic or evaluation purposes are included in the category of related services. Related services can also be school health services and school nurse services, social work services in schools, and parent counseling and training. However, related services do not include a medical device that is surgically implanted, the optimization of that device's functioning, maintenance or replacement of that device.

The term *supplementary aids and services* means aids, services, and other supports that are provided in regular 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.

The Individualized Education Program (IEP) must include a statement of needed special education services, related services, and supplementary aids and services to be provided to the child or on behalf of the child. These services must be based on peer-reviewed research to the extent practicable.

Additionally, the IEP must contain a statement of any needed program modifications and supports for school personnel that will be provided. The Admission, Review and Dismissal (ARD) committee determines the length of the child's school day in the IEP.

### **Supplemental Areas to be Addressed for Children with Autism**

To meet the needs of a child with autism, there are additional areas that must be considered and addressed by the ARD committee. If the committee determines that services are not needed in one or more of these additional areas, the IEP must include a statement to that effect and the basis upon which the determination was made.

For a child with autism, the ARD committee must consider whether:

- it is necessary to prioritize behavioral objectives for the child,
- the child needs a daily schedule with minimal unstructured time and a specific student-to-staff ratio,
- the child needs parent training, in-home training or some viable alternative, and
- the child needs extended educational programming.

For children 12 years and older, the committee considers the prevocational and vocational needs of the child.

### **Extended School Year (ESY)**

The ARD committee decides if the child qualifies for ESY services. The decision is based on formal and/or informal measures. ESY is not limited to categories of disability. These are individualized decisions based on the criteria for extended school year and not a "one size fits all" decision.

A child qualifies for ESY services if, in one or more critical areas addressed in the child's current IEP, the child has exhibited, or reasonably may be expected to exhibit, severe or substantial regression that cannot be regained within a reasonable period of time. The term *severe or substantial regression* means that the child has been, or will be, unable to maintain one or more acquired critical skills in the absence of ESY services.

A skill is critical when the loss of that skill results, or is reasonably expected to result, in any of the following occurrences to the child during the first eight weeks of the next regular school year:

- removal to a more restrictive placement,

- a significant loss of skills needed to progress in the general curriculum,
- a significant loss of self-help skills and, therefore, requires more direct services and support,
- loss of access to noneducational community-based independent living skill instruction or an independent living environment as a result of losing skills, or
- loss of access to on-the-job training or productive employment due to losing skills.

If the loss of acquired critical skills would be particularly severe or substantial, or if such loss results or reasonably may be expected to result, in immediate physical harm to the child or to others, Extended School Year (ESY) services may be justified without consideration of the period of time for regaining such skills. In any case, the period of time for regaining a critical skill shall not exceed eight weeks.

If the Admission, Review and Dismissal (ARD) committee determines that the child is in need of ESY services, then the Individualized Education Program (IEP) must also include goals and objectives for ESY services from the child's current IEP.

## **Transition**

The child must be invited to the ARD committee meeting when transition services will be discussed. Transition services are a coordinated set of activities designed to help the child move from school to post-school activities. In Texas, those activities begin by age 14 with an examination of transition issues including the appropriate courses of study based on transition goals.

Before a child reaches age 14, the IEP of the child must include appropriate measurable postsecondary transition goals: related to training, education, employment, and where appropriate, independent living skills. Additionally, the IEP must include transition services needed to assist the child in reaching those goals.

The ARD committee must make decisions regarding transition goals and services based on age-appropriate transition assessments. The transition goals and services in the child's IEP must be updated annually.

At least one year before the child reaches the age of 18, the school must inform the child about the transfer of rights. 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 the Individuals with Disabilities Education Act (IDEA), if any, that will transfer to the child upon reaching the age of majority. Unless the student is determined to be incompetent under State law and the parent is appointed as the guardian, the parent's rights under the IDEA transfer to the adult student at age 18.

## ★ Placement

The Individuals with Disabilities Education Act (IDEA) guarantees that a child with a disability will be educated in the Least Restrictive Environment (LRE). This means that to the maximum extent appropriate, the child with a disability must be educated with children who are nondisabled. Removal of a child from the regular educational environment may only occur 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.

Placement refers to the educational program on the continuum of placements (regular classes, special classes, special schools, homebound instruction, instruction in hospitals and institutions). Placement does not refer to the specific location or site. The Admission, Review and Dismissal (ARD) committee determines educational placement. The decision must be based on the child's Individualized Education Program (IEP).

## ★ Graduation

All children in Texas are expected to finish high school. The goal is for each child to finish high school with skills designed to meet their unique needs and prepare them for further education, employment and independent living. Graduation is a change of placement. In Texas, the ARD committee decides whether to change the child's placement. Therefore, when graduation is anticipated, the ARD committee meets to consider whether graduation criteria will be met.

The child with a disability may graduate and receive a diploma if the child has met State or local minimum curriculum and credit requirements (whichever is greater), and has either passed the statewide exit exam or been previously exempted from passing the exam. When graduating according to one of these two circumstances, graduation ends services from the school and terminates the child's eligibility for special education and related services. A reevaluation is not required. Upon graduation, the school must give the child a summary of academic achievement and functional performance known as the summary of performance. This summary of performance must include suggestions to assist the child in meeting goals set for after high school.

A child with a disability may also graduate and receive a diploma under an IEP. The child must be reevaluated prior to this type of graduation. In deciding whether the child is eligible to graduate under an IEP, the ARD committee must consider the reevaluation, the views of the parent and/or student as appropriate, and, when appropriate, seek in writing and consider written recommendations from adult service agencies. The committee verifies the student has successfully completed:

- the State's or district's (whichever is greater) minimum credit requirements for students without disabilities;
- the State's or district's minimum curriculum requirements to the extent possible with modifications/substitutions only when it is determined

necessary by the committee for the student to receive an appropriate education; and

- the Individualized Education Program (IEP), and met one of the following conditions:
  - the child is employed full-time with sufficient self-help skills to maintain the employment without support from the school,
  - the child has access to outside services, employment or educational options for which the child has been prepared by the school, or
  - the child has shown mastery of specific employability and self-help skills which do not require direct and ongoing educational support from the school.

A child who graduates under the IEP may return and be eligible for services through the end of the school year in which the child reaches age 22. The Admission, Review and Dismissal (ARD) committee must determine needed educational services upon the request of the child or parent to resume services, as long as the child meets the age eligibility requirements.

A child who no longer meets age eligibility requirements may also graduate and receive a diploma based on a reevaluation and a determination by the ARD committee that the requirements of the child's IEP have been met. A child receiving special education services who is 21 on September 1 of a school year shall be eligible for services through the end of that school year or until graduation, whichever comes first. The child must be reevaluated prior to this type of graduation.

A child who does not meet graduation criteria (and; therefore, does not receive a diploma) but whose eligibility terminates due to no longer being age eligible for special education and related services must be given a summary of performance upon exiting from special education. This child does not have to be reevaluated and instead receives a summary of performance.



## **Discipline**

Schools and parents share the responsibility for helping a child to become a good citizen. At times, a child's behavior can be challenging for both school officials and parents. While each child's situation has its own unique set of challenges, there are some common elements used in the discipline process.



### **Some General Principles**

School officials may consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for a child with a disability who has violated the student code of conduct. As a general rule, the consequences set out in the school's code of conduct apply to all students, including children with disabilities.

There are, however, special rules and limitations that may apply to a child with a disability if the school proposes to:

- change the child's placement, or
- remove the child from the Individualized Education Program (IEP) placement for more than ten school days, cumulatively, during the school year.

School officials may report to law enforcement authorities that a student, including a child with a disability, is suspected of committing a crime. In some instances State law requires school officials to make a report to law enforcement. Schools that report a suspected crime to law enforcement officials must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities, provided that the transmission is permitted by the Family Educational Rights and Privacy Act. The Family Educational Rights and Privacy Act assures the confidentiality of personally identifiable information contained in education records. Under the Family Educational Rights and Privacy Act, personally identifiable information (such as the child's status as special education child) can only be released with parental consent, except in certain very limited circumstances. Therefore, in most instances, in order to transmit such records to law enforcement authorities, parental consent will be required.

### **Removal from the Individualized Education Program (IEP) Placement**

School officials may remove a child with a disability from the child's IEP placement if the child violates the code of conduct. This removal can be to an appropriate interim alternative educational setting, another setting, or suspension.

The authority of school officials to order such a removal is limited to no more than ten consecutive school days, except for *special circumstances* situations. In ordering the removal of the child with a disability, the school official must apply the same standards and follow the same procedures that apply to the general education student.

#### The First Ten Days of Removal

For the first ten days of such removals in the school year, there is no requirement to hold an Admission, Review and Dismissal (ARD) committee meeting or conduct a manifestation determination. As far as services, the child with a disability must be treated the same as the general education student. This may include an out-of-school suspension of up to three days with no services provided.

#### Beyond the First Ten Days

School officials may order a short-term removal (up to ten school days) of a child with a disability after the first ten days of removal in response to separate incidents of misconduct, provided that these removals do not constitute a *change of placement*.

For any such short-term removal, (beyond the first ten days) the school must provide services to the child with a disability to enable the child to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals set out in the child's Individualized Education Program (IEP). School personnel must consult with at least one of the child's teachers to decide which services are needed.

### **Change of Placement**

A change of placement due to disciplinary removals may occur in two ways. It is a change of placement if a child is removed for more than ten consecutive school days. It is also a change of placement if the child is subjected to a series of shorter removals that constitute a pattern.

A pattern exists if:

- the removals total more than ten school days in a school year;
- the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
- 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.

The school will determine on a case-by-case basis whether or not a pattern exists. The parent may challenge the school's decision about this through a due process hearing or judicial proceedings.

If the school proposes a removal that will constitute a change of placement due to the child's violation of the student code of conduct, school officials, must notify the parent of that decision and provide the parent with a copy of the Notice of Procedural Safeguards document. This must be done on the date on which the decision is made to make a removal that constitutes a change of placement. In addition, the school must arrange for a meeting of the Admission, Review and Dismissal (ARD) committee to make a manifestation determination.

### **Manifestation Determination**

Within ten school days of any decision to change the placement of a child with a disability due to a violation of the code of conduct, the ARD committee must meet and conduct a Manifestation Determination Review (MDR).

When conducting a MDR, the ARD committee must review all relevant information in the child's file, including the IEP, any teacher observations, and any relevant information provided by the parents. Parents may present any relevant information at this time for the ARD committee to review when making the determination whether the child's conduct is a manifestation of the child's disability.

The Admission, Review and Dismissal (ARD) committee must then answer both of the following questions:

- Was the conduct in question caused by, or did it have a direct and substantial relationship to the child's disability?
- Was the conduct in question the direct result of the school district's failure to implement the Individualized Education Program (IEP)?

### **When Conduct Is a Manifestation**

If the ARD committee answers "yes" to either of these questions, the conduct is a manifestation of the child's disability. In that event, the committee must conduct a Functional Behavioral Assessment (FBA) and implement a behavioral intervention plan for the child unless the school had conducted a FBA for the child before the behavior that resulted in the change of placement.

If a Behavior Intervention Plan (BIP) is already in place, the committee must review the plan and modify it as necessary to address the child's behavior. In addition, if the committee concludes that the child's conduct was caused by the school's failure to implement the IEP, the school must take immediate steps to remedy the deficiencies.

If the ARD committee concludes that the child's behavior is a manifestation of his or her disability, the committee must return the child to the placement from which the child was removed unless:

- the parent and the school agree to a change of placement as part of the modification of the child's behavioral intervention plan; or
- the child's violation of the code of conduct involves the special circumstances offenses.

### **When Conduct Is Not a Manifestation**

If the ARD committee concludes that the child's conduct was not a manifestation of the disability, school personnel may discipline the child in the same manner and for the same duration as they would discipline a child without disabilities who had engaged in the same conduct.

However, the school must ensure that the child continues to receive educational services so that the child will continue to participate in the general curriculum, although in another setting, and continue to progress toward meeting the goals set out in the child's IEP.

The child's ARD committee will determine the interim alternative educational setting in which the child will be served. In Texas the interim alternative educational setting may be the Disciplinary Alternative Education Program (DAEP).

## **Special Circumstances**

School personnel may remove a child with a disability to an interim alternative educational setting without regard to whether the child's behavior is a manifestation of the disability if the child commits any one of three offenses at school, on school premises, or at a school function under the jurisdiction of the school district or the Texas Education Agency (TEA). These three special circumstances offenses are:

- if the child carries a weapon or possesses a weapon,
- if the child knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, or
- if the child has inflicted serious bodily injury upon another person.

The child's Admission, Review and Dismissal (ARD) committee will determine the interim alternative educational setting in which the child will be served.

## **Expedited Due Process Hearing**

A parent who disagrees with a decision regarding placement in an interim alternative educational setting or manifestation determination may request a due process hearing as described in more detail below. While the hearing is pending, unless the parent and school district agree otherwise, stay-put requires that the child will remain in the interim alternative educational setting selected by the ARD committee until the hearing officer decides the case or the assignment to the interim alternative educational setting concludes, whichever occurs first.

Due process hearings concerning disciplinary placements are conducted in an expedited manner. This means that the resolution meeting must be held within seven calendar days and the hearing must be held within 20 school days of the request. The hearing officer must make a decision within ten school days after the hearing.

The school district may request an expedited due process hearing if it believes that maintaining the current placement of the child would be substantially likely to result in injury to the child or others. In such a case, the hearing officer may order the child to stay in the interim alternative educational setting for not more than 45 school days.

## **Child Not Yet Eligible**

If any one of three actions takes place prior to the behavior that precipitated the disciplinary action, general education students are entitled to the legal protections that pertain to children with disabilities in the context of disciplinary action. These three actions are:

- if the parent expresses concerns in writing to supervisory or administrative personnel, or to the child's teacher, that the child needs special education and related services,

- if the parent asks for an evaluation of the child in accordance with the Individuals with Disabilities Education Act (IDEA), or
- if school personnel express specific concerns about a pattern of the child's behavior directly to the special education director or other supervisory personnel of the school.

However, general education children are not entitled to this protection under the IDEA if:

- the parent has not allowed an evaluation of the child to take place;
- the parent has refused special education services for the student; or
- the child has been evaluated and determined not to be eligible for special education services.

If the child is not entitled to the legal protections that pertain to children with disabilities, the child will be subject to disciplinary measures that apply to children without disabilities who engage in comparable behavior. The parent of such a child may request an evaluation of the child for possible special education services during the time when the child is being disciplined. If this occurs, the school district must complete the evaluation in an expedited manner. Until the evaluation is completed, the child remains in the placement decided upon by the school, which may involve suspension or expulsion.



## **Confinement, Seclusion, Restraint and Time-Out**

The rules pertaining to confinement, seclusion, restraint, and time-out do not apply to:

- peace officers who are performing law enforcement duties,
- juvenile probation, detention, or corrections personnel, or
- educational services providers with whom a child is placed by a judicial authority, unless those services are provided in an educational program of a school district.

### **Confinement and Seclusion**

School officials may not place a child in a locked room of any kind if that room is designed solely to seclude a person and contains less than 50 square feet of space. However, State law allows school officials to confine a child in a locked and/or unattended situation in very rare circumstances. This is permitted only if the child has possessed a weapon, school officials are awaiting the arrival of law enforcement personnel, and the confinement is necessary to prevent the child from causing bodily harm to the child or another person.

### **Restraint**

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

School officials may restrain a child with a disability only when a child's behavior poses a threat of imminent, serious physical harm to the child or others, or imminent, serious property destruction. School 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.

If restraint is used, the school must try to notify the parent on the day it occurs and must provide written notice of the restraint through the mail or other means within one school day. Written documentation regarding the use of restraint must be placed in the child's special education folder so that it is available for consideration by the Admission, Review and Dismissal (ARD) committee.

Certain actions which involve a significant restriction of the free movement of the child's body are not considered restraint. These are:

- physical contact or prescribed adaptive equipment to promote normative body positioning and/or physical functioning,
- limited physical contact to promote safety, to prevent a potentially harmful action, to teach a skill, to redirect attention, to provide guidance to a location or to provide comfort,
- limited physical contact or prescribed adaptive equipment to prevent a child from engaging in ongoing, repetitive self-injurious behaviors (this will normally be specified in the child's Individualized Education Program (IEP)), and
- seatbelts and other safety equipment to secure students during transportation.

### **Time-Out**

Time-out is a technique in which a child is separated from other students for a limited period of time so that the child has an opportunity to regain self-control. No force or even a threat of force may be used to place a child in time-out. It may not take place in a locked room, nor can the exit be held shut from the outside or otherwise blocked by an inanimate object.

Time-out may be used only along with an array of positive behavior interventions and must be included in the child's IEP or Behavioral Intervention Plan (BIP) if used on a recurring basis. Time-out must not prevent the child from progressing in the general curriculum and advancing toward achieving the goals in the child's IEP.



### **Procedural Safeguards**

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

A copy of the Notice of Procedural Safeguards must be provided to the parent at least once a year and when any of the following circumstances occurs:

- upon initial or parent request for evaluation,
- upon receipt of the first State complaint in a school year,
- upon receipt of the first due process hearing complaint in a school year,
- on the day a decision is made to make a disciplinary change of placement, and
- upon request by a parent.

The Notice of Procedural Safeguards must include a full explanation of all of the procedural safeguards available under the Individuals with Disabilities Education Act (IDEA) relating to:

- independent educational evaluations,
- prior written notice,
- parental consent,
- parental right to access any of the child's education records,
- opportunity to present and resolve complaints through the due process complaint and State complaint procedures, including:
  - the time period in which to file a complaint,
  - the opportunity for the agency to resolve the complaint, and
  - 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,
- the availability of mediation,
- the child's placement during the pendency of any due process complaint,
- procedures for students who are subject to placement in an interim alternative educational setting,
- requirements for unilateral placement by parents of children in private schools at public expense,
- hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations,
- civil actions, including the time period in which to file those actions, and
- attorneys' fees.

Many of these rights have been discussed in this document. However, for a complete explanation of these rights, see the Notice of Procedural Safeguards document on the Internet or request a copy from the school counselor or the school district's special education department.



## **Dispute Resolution**

From time to time, disputes may arise between a parent and a school district relating to the identification, evaluation, educational placement, or the provision of a Free Appropriate Public Education (FAPE) to a child with a disability. It is the policy and intent of the Texas Education Agency (TEA) to encourage and support the resolution

of any dispute at the lowest level possible in a prompt, efficient, and effective manner.

The possible options for resolving disputes include, but are not limited to:

- meetings of the child's admission, review, and dismissal committee,
- meetings or conferences with the child's teachers,
- meetings or conferences, subject to local school district policies, with campus administrator(s), the special education director, the superintendent, or the board of trustees of the district,
- requesting mediation through the Texas Education Agency (TEA),
- filing a special education complaint with the TEA, or
- requesting a special education due process hearing through the TEA.

Upon the filing of a request for a due process hearing, the parent and the school district will also be provided with an opportunity to resolve the dispute through the mediation process established by the TEA.

The TEA has additional information regarding dispute resolution at <http://www.tea.state.tx.us/special.ed/medcom/>.

### **Mediation**

A parent or a school may ask the TEA to assign a mediator to help find a way to solve the problem. Mediation is provided at no cost to the parent or the school.

Mediations are informal and voluntary on the part of the parent and the school. Mediations are confidential. Mediations can help the school and the parent come to an agreement and rebuild positive relationships. Mediators encourage cooperation and help keep the focus on the child.

A parent or school may request mediation in writing from the TEA, by mail or by fax:

Texas Education Agency  
Division of Legal Services  
1701 North Congress Avenue  
Austin, Texas 78701-1494  
Telephone: 512.463.9720  
Fax: 512.475.3662

The TEA has additional information regarding mediation at <http://www.tea.state.tx.us/special.ed/medcom/medinfo.html>.

### **Complaint**

When the parent or a third party believes the school has violated federal or State requirements related to special education, the parent or a third party can file a complaint. The complainant (the person filing a complaint) must sign a written complaint and provide a copy at the same time to both the TEA and the school district.

The written complaint must state the violations believed to have occurred. Also, the complaint must state the facts on which the complaint is based.

The complaint may be resolved locally between the complainant and the school district. The complainant and the school district may agree to participate in mediation. However, if the complaint is not resolved, the school district may submit an early resolution proposal to the Texas Education Agency (TEA). If the TEA does not accept the early resolution proposal, it will investigate the complaint and make a determination.

A form and a checklist for the written complaint are available by contacting the TEA at the following address:

Texas Education Agency  
Division of IDEA Coordination  
1701 North Congress Avenue  
Austin, Texas 78701-1494  
Telephone: 512.463.9414  
TTY: 512.475.3540  
Fax: 512.463.9560

The written complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received by the TEA. The TEA has additional information regarding filing complaints at <http://www.tea.state.tx.us/special.ed/medcom/compinfo.html>.

### **Due Process Hearing**

Sometimes a parent and the school do not agree regarding the school's proposed or refused initiation or change of a child's program. If a parent files a request for a due process hearing with the TEA, the school must give a copy of the Notice of Procedural Safeguards to the parent. A parent may ask for a due process hearing by writing a request to the TEA at the following address:

Texas Education Agency  
Division of Legal Services  
Special Education Docket Administrator  
1701 North Congress Avenue  
Austin, Texas 78701-1494  
Telephone: 512.463.9720  
Fax: 512.475.3662

The request is to include the child's name, the address where the child lives, and the name of the school the child attends. The request is to include the problem relating to the school's proposed or refused initiation or change of the educational program. In addition, the request is to include what the parent believes would resolve the problem.

The request for a due process hearing must be within one year of the date the complainant knew or should have known about the alleged action that forms the basis of the hearing request. This timeline does not apply if the complainant was prevented from requesting the hearing because of specific

misrepresentations by the school that it had resolved the problem, or because the school withheld information that was required to be provided.

The Texas Education Agency (TEA) provides answers to frequently asked questions about due process hearings at:

<http://www.tea.state.tx.us/special.ed/hearings/hodfaq.html>.

The TEA provides forms in English and in Spanish to file a due process hearing at: <http://www.tea.state.tx.us/special.ed/hearings/duepro.html>.

### **Stay-Put**

During a due process hearing and any court appeals, the child must remain in the current educational placement unless the parent and the school agree otherwise. The child placed in a disciplinary setting must stay there until the hearing officer reaches a final decision or the term of the discipline ends.

### **Resolution Period**

When a parent requests a due process hearing, the school has 30 days from receipt of the due process hearing complaint to attempt to resolve the due process hearing complaint with the parent. The timelines for a due process hearing do not begin running until the expiration of this 30-day resolution period. However, the 30-day resolution period does not apply in the case of an expedited due process hearing complaint involving discipline.

During the resolution period, the school is required to convene a resolution meeting with the parent within 15 days of receiving notice of the parent's due process hearing complaint. Even in an expedited due process hearing complaint involving discipline, a resolution meeting is required. For expedited due process hearing complaints, the deadline for convening the resolution meeting is seven days.

The purpose of the resolution meeting is to give the parent the opportunity to discuss the complaint and the facts in order to allow the school to resolve the problem. An attorney for the school district may not be included in the resolution meeting unless the parent brings an attorney to the resolution meeting.

The resolution meeting is not required if the parent and the school agree in writing to waive the resolution meeting. Also, the resolution meeting does not need to be held if the parent and the school agree to go to mediation instead.

The school may request dismissal of the parent's due process hearing complaint if the school cannot get the parent to participate in the resolution meeting after reasonable efforts have been made.

### **Due Process Hearing Procedures**

At least five business days prior to a due process hearing being conducted, the parent and the school must disclose to each other and the hearing officer copies of all evidence. The disclosure must include evaluations

completed by that date and recommendations based on the evaluations which the party intends to use at the hearing.

Both the school and parent have the following rights in a due process hearing:

- to be accompanied and advised by an attorney and by individuals with special knowledge or training with respect to the problems of children with disabilities,
- to present evidence and confront and cross-examine, and compel the attendance of witnesses,
- to prohibit the introduction of any evidence that has not been properly disclosed,
- to obtain a transcript of the hearing, and
- to obtain a written decision including findings of fact.

The parent has the following additional rights in a due process hearing:

- to have the child present,
- to open the hearing to the public, and
- to have the transcript of the hearing provided at no cost.

The Texas Education Agency (TEA) will ensure that a final hearing decision is reached and mailed to the parent and the school within 45 days after the conclusion of the initial 30-day resolution period. The hearing officer may extend the time at the request of the parent or the school. For an expedited due process hearing, the hearing must occur on or before 20 days after the request for an expedited due process hearing. In this case the hearing officer must reach a final decision within 30 days of a request for such hearing. The parent or the school may appeal the findings of the hearing officer to State or federal court.

The school may be ordered to pay reasonable attorney's fees if the court rules the parent is the *prevailing party*. If the school prevails and a court finds that the parent's due process hearing complaint was presented for any improper purpose such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation, the parent may be ordered to pay the school district's reasonable attorney's fees. Additionally, the parent's attorney may be ordered to pay the school district's reasonable attorney's fees under certain circumstances.



## Conclusion

It is important to note that this Guide to the Admission, Review and Dismissal Process will be updated as changes are needed. The paper copy of this guide will always note a production date. The most current version of the document will reside on the Legal Framework website at [www.esc18.net](http://www.esc18.net).

The Legal Framework for the Child-Centered Process is a template in an electronic format that summarizes state and federal requirements for special education by topic. Parents and schools may use the Legal Framework as a reference in managing the special education system's procedures. The Legal Framework for the Child-Centered Process is a Texas Education Agency (TEA) project under the state leadership of Region 18 Education Service Center with the support and staff participation from each of the other regional education service centers.

This guide will help the parent take an active role in the education of the child with a disability. Remembering that children are the future of Texas, schools and parents working together will lead to greater success for children.

Internet resources are  
available at the end of this  
document on page D-1.

**Notes:**

## Reference List

<b>AEP</b>	<b>A</b> lternative <b>E</b> ducation <b>P</b> rogram
<b>AI</b>	<b>A</b> uditory <b>I</b> mpairment
<b>ARD</b>	<b>A</b> dmission, <b>R</b> eview and <b>D</b> ismissal committee
<b>AT</b>	<b>A</b> ssistive <b>T</b> echnology
<b>BIP</b>	<b>B</b> ehavior <b>I</b> ntervention <b>P</b> lan
<b>CATE</b>	<b>C</b> areer and <b>T</b> echnology <b>E</b> ducation
<b>DAEP</b>	<b>D</b> isiplinary <b>A</b> lternative <b>E</b> ducation <b>P</b> rogram
<b>ECI</b>	<b>E</b> arly <b>C</b> hildhood <b>I</b> ntervention
<b>ED</b>	<b>E</b> motional <b>D</b> isturbance
<b>ESY</b>	<b>E</b> xtended <b>S</b> chool <b>Y</b> ear
<b>FAPE</b>	<b>F</b> ree <b>A</b> ppropriate <b>P</b> ublic <b>E</b> ducation
<b>FBA</b>	<b>F</b> unctional <b>B</b> ehavioral <b>A</b> ssessment
<b>FIE</b>	<b>F</b> ull and <b>I</b> ndividual <b>E</b> valuation
<b>IDEA</b>	<b>I</b> ndividuals with <b>D</b> isabilities <b>E</b> ducation <b>A</b> ct of 2004
<b>IEE</b>	<b>I</b> ndependent <b>E</b> ducational <b>E</b> valuation
<b>IEP</b>	<b>I</b> ndividualized <b>E</b> ducation <b>P</b> rogram
<b>LD</b>	<b>L</b> earning <b>D</b> isability
<b>LEA</b>	<b>L</b> ocal <b>E</b> ducation <b>A</b> gency
<b>LEP</b>	<b>L</b> imited <b>E</b> nglish <b>P</b> roiciency
<b>LPAC</b>	<b>L</b> anguage <b>P</b> roiciency <b>A</b> ssessment <b>C</b> ommittee
<b>LRE</b>	<b>L</b> east <b>R</b> estrictive <b>E</b> nvironment
<b>MDR</b>	<b>M</b> anifestation <b>D</b> etermination <b>R</b> eview
<b>MD</b>	<b>M</b> ultiple <b>D</b> isabilities
<b>MR</b>	<b>M</b> ental <b>R</b> etardation
<b>NCEC</b>	<b>N</b> oncategorical <b>E</b> arly <b>C</b> hildhood
<b>OI</b>	<b>O</b> rthopedic <b>I</b> mpairment
<b>OHI</b>	<b>O</b> ther <b>H</b> ealth <b>I</b> mpairment
<b>REED</b>	<b>R</b> eview of <b>E</b> xisting <b>E</b> valuation <b>D</b> ata
<b>RTI</b>	<b>R</b> esponse <b>T</b> o <b>I</b> ntervention
<b>SI</b>	<b>S</b> peech or language <b>I</b> mpairment
<b>TAKS</b>	<b>T</b> exas <b>A</b> ssessment of <b>K</b> nowledge and <b>S</b> kills
<b>TEKS</b>	<b>T</b> exas <b>E</b> ssential <b>K</b> nowledge and <b>S</b> kills
<b>TAKS-Alt</b>	<b>T</b> exas <b>A</b> ssessment of <b>K</b> nowledge and <b>S</b> kills— <b>A</b> lternate
<b>TAKS-I</b>	<b>T</b> exas <b>A</b> ssessment of <b>K</b> nowledge and <b>S</b> kills— <b>I</b> nclusive
<b>TEA</b>	<b>T</b> exas <b>E</b> ducation <b>A</b> gency
<b>TBI</b>	<b>T</b> raumatic <b>B</b> rain <b>I</b> njury
<b>VI</b>	<b>V</b> isual <b>I</b> mpairment

This page  
intentionally  
left blank

## Glossary

### A

#### **Admission, Review, and Dismissal (ARD) Committee**

A committee is composed of a child's parent(s) and school personnel who are involved with the child. The ARD committee determines a child's eligibility to receive special education services and develops the individualized education program (IEP) of the child. The ARD committee is the IEP team defined in federal law.

#### **Adult Student**

Unless, by court order, a student who is 18 years of age or older has been determined to be incompetent or the student's rights have been otherwise restricted, parental rights under the Individuals with Disabilities Education Act (IDEA) transfer to a student with a disability when the student reaches 18 years of age, except that the local educational agency (LEA) must continue to provide any required notice to both parents and the student.

#### **Annual Goals**

An individualized education program (IEP) must include a statement of measurable annual goals, including academic and functional goals, designed to 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 meet each of the child's other educational needs that result from the child's disability. The goals reflect what the ARD committee believes the child can reasonably accomplish in a year.

#### **Assistive Technology Device (ATD)**

Any item, piece of equipment, or product system 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.

#### **Assistive Technology Service (ATS)**

Any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device.

#### **Auditory Impairment**

Auditory Impairment means deafness or hearing impairment under federal law. Deafness under federal law 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. Hearing impairment under federal law 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. A determination of auditory impairment must comply with criteria set forth in federal and state law as described in the Auditory Impairment framework of the Legal Framework for the

Child-Centered Process located at <http://fw.esc18.net/frameworkdisplayportlet/ESC18-FW-Summary.aspx?FID=134>.

### **Autism**

Autism under federal law means a developmental disability that generally appears before the age of three and adversely affects verbal and nonverbal communication and social interaction. Other characteristics often associated with autism are:

- Engagement in repetitive activities and stereotyped movements,
- Resistance to environmental change or change in daily routines, and
- Unusual responses to sensory experiences.

Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance. A determination of autism must comply with criteria set forth in federal and state law as described in the Autism framework of the Legal Framework for the Child-Centered Process located at <http://fw.esc18.net/frameworkdisplayportlet/ESC18-FW-Summary.aspx?FID=135>.

## **B**

### **Behavior Intervention Plan (BIP)**

A written plan to address behavioral concerns impeding the child's learning or that of others. It includes positive behavioral interventions and supports, and other strategies, to address the behavior.

## **C**

### **Child Find**

Child Find refers to state-developed policies and procedures which ensure that all children with disabilities residing in Texas, regardless of the severity of their disabilities, who are in need of special education and related services are identified, located, and evaluated.

### **Child with a Disability**

A child with mental retardation, auditory impairments (including hearing impairment and deafness), speech or language impairment, visual impairment (including blindness), serious emotional disturbance (referred to in this title as "emotional disturbance"), orthopedic impairment, autism, traumatic brain injury, other health impairment, or specific learning disability; and who, by reason thereof, needs special education and related services.

## **D**

### **Deaf-Blindness**

Deaf-blindness under federal law 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. A determination of deaf-blindness must comply with criteria set forth in federal and state law as described in the Deaf-Blindness framework of the Legal Framework for the Child-Centered Process located at <http://fw.esc18.net/frameworkdisplayportlet/ESC18-FW-Summary.aspx?FID=148>.

## E

### **Early Childhood Intervention (ECI)**

Programs and services provided to infants and toddlers with developmental delays from birth through age two administered under Part C of the Individuals with Disabilities Education Act (IDEA).

#### **Evaluation**

The collection of information to determine whether a child is a child with a disability, and to determine the educational needs of the child. The team that collects or reviews evaluation data, referred to as the group of qualified professionals, must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent. An evaluation may include giving individual tests, observing the student, looking at educational records, and talking with the student and his/her teachers and parents.

#### **Emotional Disturbance**

Emotional disturbance under federal law 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:

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

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.

A determination of emotional disturbance must comply with criteria set forth in federal and state law as described in the Emotional Disturbance framework of the Legal Framework for the Child-Centered Process located at <http://fw.esc18.net/frameworkdisplayportlet/ESC18-FW-Summary.aspx?FID=136>.

### **Extended School Year Services (ESY)**

An individualized educational program (IEP) for children with disabilities that is provided beyond the regular school year. The need

for ESY services must be determined on an individual basis by the child's ARD committee from formal and/or informal evaluations provided by the LEA or the parents. A child is eligible for ESY services when the child has exhibited, or reasonably may be expected to exhibit, severe or substantial regression in critical skill area(s) that cannot be recouped within a reasonable period of time.

## **F**

### **Free Appropriate Public Education (FAPE)**

Special education and related services that have been provided at public expense, under public supervision and direction and without charge; meet the standards of the Texas Education Agency (TEA); include an appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with the individualized education program (IEP).

## **G**

### **General Education Curriculum**

In Texas the general education curriculum is the Texas Essential Knowledge and Skills (TEKS).

### **Graduation**

The successful completion of all curriculum requirements and satisfactory performance on the secondary exit-level assessment instrument, or successful completion of an individualized education program (IEP) and the criteria for graduating pursuant to an IEP. A child with disabilities may graduate by completing the same program required of non-disabled children or by completing the requirements of his/her IEP and meeting the criteria set forth by the Commissioner in 19 T.A.C. §89.1070.

## **H**

### **Hearing Officer**

An impartial person appointed by the Texas Education Agency (TEA) in charge of a due process hearing. The hearing officer cannot be an employee of any agency involved in the education or care of the child who is the subject of the hearing and cannot have any personal or professional interest that would conflict with his or her objectivity in the hearing. The hearing officer must possess the necessary knowledge and skill necessary to serve as a hearing officer. The hearing officer issues a written decision based upon the evidence and witnesses presented at the hearing.

## **I**

### **Independent Educational Evaluation (IEE)**

An evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of the child being evaluated.

A parent has a right to request an IEE at public expense when the parent disagrees with an evaluation conducted or obtained by the LEA. When the parent asks for an IEE, the LEA must give the parent its evaluation criteria and where to get an IEE. The criteria must include the qualifications of the examiner and the location of the evaluation.

The IEE must meet the same criteria the LEA uses for its own evaluations. The LEA does not have to pay for the IEE if it can show at a due process hearing that the LEA's evaluation is appropriate or if it can show that the IEE does not meet the LEA's criteria. The parent always has the right to get an IEE at the parent's expense. Regardless of who pays for it, the ARD committee must consider any IEE that meets its criteria.

### **Individualized Education Program (IEP)**

A written statement for each child with a disability that is developed, reviewed and revised by the ARD committee, of which parents are active members. The IEP includes the student's present levels of academic achievement and functional performance, participation in State and district-wide assessments, transition services, annual goals, special factors, special education, related services, supplementary aids and services, extended school year services, and least restrictive environment.

## **L**

### **Least Restrictive Environment (LRE)**

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 not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

### **Local Educational Agency (LEA)**

A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools.

## **M**

### **Mediation**

One of the available options used for resolving disagreements about a child's identification, evaluation, educational placement and the provision of a free appropriate public education (FAPE). Mediation is

voluntary. If both the parent and LEA agree to participate the Texas Education Agency (TEA) provides a trained mediator to conduct the mediation. Mediation may not be used to delay or deny a parent a due process hearing or any other procedural safeguards. The TEA will automatically offer mediation services to the parent and LEA when a due process hearing is requested.

### **Mental Retardation**

Mental retardation under federal law means significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance. A determination of mental retardation must comply with criteria set forth in federal and state law as described in the Mental Retardation framework of the Legal Framework for the Child-Centered Process located at <http://fw.esc18.net/frameworkdisplayportlet/ESC18-FW-Summary.aspx?FID=137>.

### **Multiple Disabilities**

Multiple disabilities under federal law means concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment), the combination of which causes severe educational needs that they cannot be accommodated in special education programs solely for one of the specific impairments. Multiple disabilities does not include deaf-blindness. A determination of multiple disabilities must comply with criteria set forth in federal and state law as described in the Multiple Disabilities framework of the Legal Framework for the Child-Centered Process located at <http://fw.esc18.net/frameworkdisplayportlet/ESC18-FW-Summary.aspx?FID=145>.

## **N**

### **Native Language**

When used with respect to an individual who is limited English proficient, means the language normally used by the individual or, in the case of a child, the language normally used by the parents of the child.

### **Noncategorical Early Childhood**

Noncategorical early childhood under state law means a child between the ages of 3-5 years old who is evaluated as having mental retardation, emotional disturbance, a specific learning disability, or autism may be described as noncategorical early childhood. A determination of noncategorical early childhood must comply with criteria set forth in federal and state law as described in the Noncategorical Early Childhood framework of the Legal Framework for the Child-Centered Process located at: <http://fw.esc18.net/frameworkdisplayportlet/ESC18-FW-Summary.aspx?FID=140>.

### **Notice of Procedural Safeguards**

A written document containing a full explanation of the procedural safeguards, written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily

understandable manner, available under the Individuals with Disabilities Education Act (IDEA) and under regulations promulgated by the Secretary of Education. 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 year, except that a copy also must be given to the parents upon initial referral or parental request for evaluation; upon the first occurrence of the filing of a due process hearing; on the date on which the decision is made to make a removal that constitutes a change of placement because of a violation of a student code of conduct; and upon request by a parent.

## O

### **Orthopedic Impairment**

Orthopedic impairment under federal law 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), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures). A determination of orthopedic impairment must comply with criteria set forth in federal and state law as described in the Orthopedic Impairment framework of the Legal Framework for the Child-Centered Process located at:

<http://fw.esc18.net/frameworkdisplayportlet/ESC18-FW-Summary.aspx?FID=144>.

### **Other Health Impairment**

Other health impairment under federal law 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 –

- 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, and sickle cell anemia, Tourette Syndrome; and
- adversely affects a student's educational performance.

A determination of other health impairment must comply with criteria set forth in federal and state law as described in the other Health Impairment framework of the Legal Framework for the Child-Centered Process located at:

<http://fw.esc18.net/frameworkdisplayportlet/ESC18-FW-Summary.aspx?FID=141>.

## P

### **Parent**

A biological or adoptive parent, a foster parent who meets State requirements for serving as parent, a guardian authorized to act as the parent or authorized to make educational decisions for the child (but not the State if the child is ward of the State), an individual acting in the place of a biological or adoptive parent with whom the

child lives, an individual who is legally responsible for the child's welfare, or an individual assigned to be a surrogate parent.

### **Present Levels**

A statement in the individualized education program (IEP) of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. For preschool children, as appropriate, the statement must describe how the disability affects the child's participation in appropriate activities. For children with disabilities who take alternate assessments aligned to alternate achievement standards, the statement must include a description of benchmarks or short-term objectives. The statement must include the strengths of the child; the concerns of the parents for enhancing the education of their child; the results of the initial evaluation or most recent evaluation of the child; and the academic, developmental, and functional needs of the child.

### **Procedural Safeguards**

A document that explains your legal rights under state law and the IDEA to be involved in and make decisions about your child's education. The document is often referred to as the "Notice of Procedural Safeguards" or "Procedural Safeguards Notice," because its purpose is to notify you of your legal rights. The Procedural Safeguards must be provided to you, at a minimum, when your child is initially referred for evaluation, each time you are notified of an ARD committee meeting, when your child is to be reevaluated, on the date on which the decision is made to make a removal that constitutes a change of placement because of a violation of a student code of conduct, and any time you file a request for a due process hearing.

### **Prior Written Notice**

Must be given to the parents of the child whenever the local educational agency (LEA) proposes to initiate or change; or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child. Texas defines a reasonable time for providing such notice as five (5) school days.

## **R**

### **Reevaluation**

Must be conducted if the local educational agency (LEA) determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or if the child's parents or teacher requests a reevaluation. It must occur not more frequently than once a year, unless the parent and the LEA agree otherwise; and at least once every 3 years, unless the parent and the local educational agency (LEA) agree that a reevaluation is unnecessary.

## **Referral**

Referral of children for a full and individual initial evaluation for possible special education services must be a part of the local educational agency's (LEA's) overall, general education referral or screening system. Prior to referral, children experiencing difficulty in the general classroom should be considered for all support services available to all students, such as tutorial, remedial, compensatory, and other services. If the child continues to experience difficulty in the general classroom after the provision of interventions, LEA personnel must refer the child for a full and individual initial evaluation. This referral for a full and individual initial evaluation may be initiated by school personnel, the child's parents or legal guardian, or another person involved in the education or care of the student.

## **Related Services**

Transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children. The term does not include a medical device that is surgically implanted, or the replacement of such device.

# **S**

## **Special Education**

Specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education.

## **Specific Learning Disability**

Specific learning disability under federal law 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. 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. A determination of specific learning disability must comply with criteria set forth in federal and state law as described in

the Specific Learning Disability framework of the Legal Framework for the Child-Centered Process located at:

<http://fw.esc18.net/frameworkdisplayportlet/ESC18-FW-Summary.aspx?FID=143>.

### **Speech or Language Impairment**

Speech or language impairment under federal law means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects the child's educational performance. A determination of speech or language impairment must comply with criteria set forth in federal and state law as described in the Speech or Language Impairment framework of the Legal Framework for the Child-Centered Process located at:

<http://fw.esc18.net/frameworkdisplayportlet/ESC18-FW-Summary.aspx?FID=138>.

### **State Assessment**

All children with disabilities are included in all State assessment programs with appropriate accommodations and alternate assessments where necessary and as indicated in their respective IEPs.

<http://www.tea.state.tx.us/student.assessment/admin/sdaa/ardtrain/phase2/index.html>

### **Supplementary Aids and Services**

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 non-disabled children to the maximum extent appropriate.

### **Surrogate Parent**

The LEA must assign an individual to act as a surrogate for the parents, to ensure the rights of a child with a disability are protected, whenever the parents are not known; the local educational agency (LEA) cannot, after reasonable efforts, locate the parents; or the child is a ward of the State. The surrogate parent must not be an employee of the State educational agency (SEA), the LEA, or any other agency that is involved in the education or care of the child. In the case of an unaccompanied homeless youth as defined in Section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)), the LEA must appoint a surrogate parent. The LEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after there is a determination that the child needs a surrogate parent. An individual assigned to act as a surrogate must complete a training program within 90 calendar days after being initially assigned as a surrogate.

## **T**

### **Texas Education Agency (TEA)**

The state department of education or state educational agency (SEA), which is responsible for the public education of all students in Texas. The Texas Education Agency works with local school districts to



## **V**

### **Visual Impairment and Blindness**

Visual impairment under federal law means an impairment in the vision that, even with correction, adversely affects the student's educational performance. The term includes both partial sight and blindness. A determination of visual impairment and blindness must comply with criteria set forth in federal and state law as described in the Visual Impairment and Blindness framework of the Legal Framework for the Child-Centered Process located at:

<http://fw.esc18.net/frameworkdisplayportlet/ESC18-FW-Summary.aspx?FID=139>.

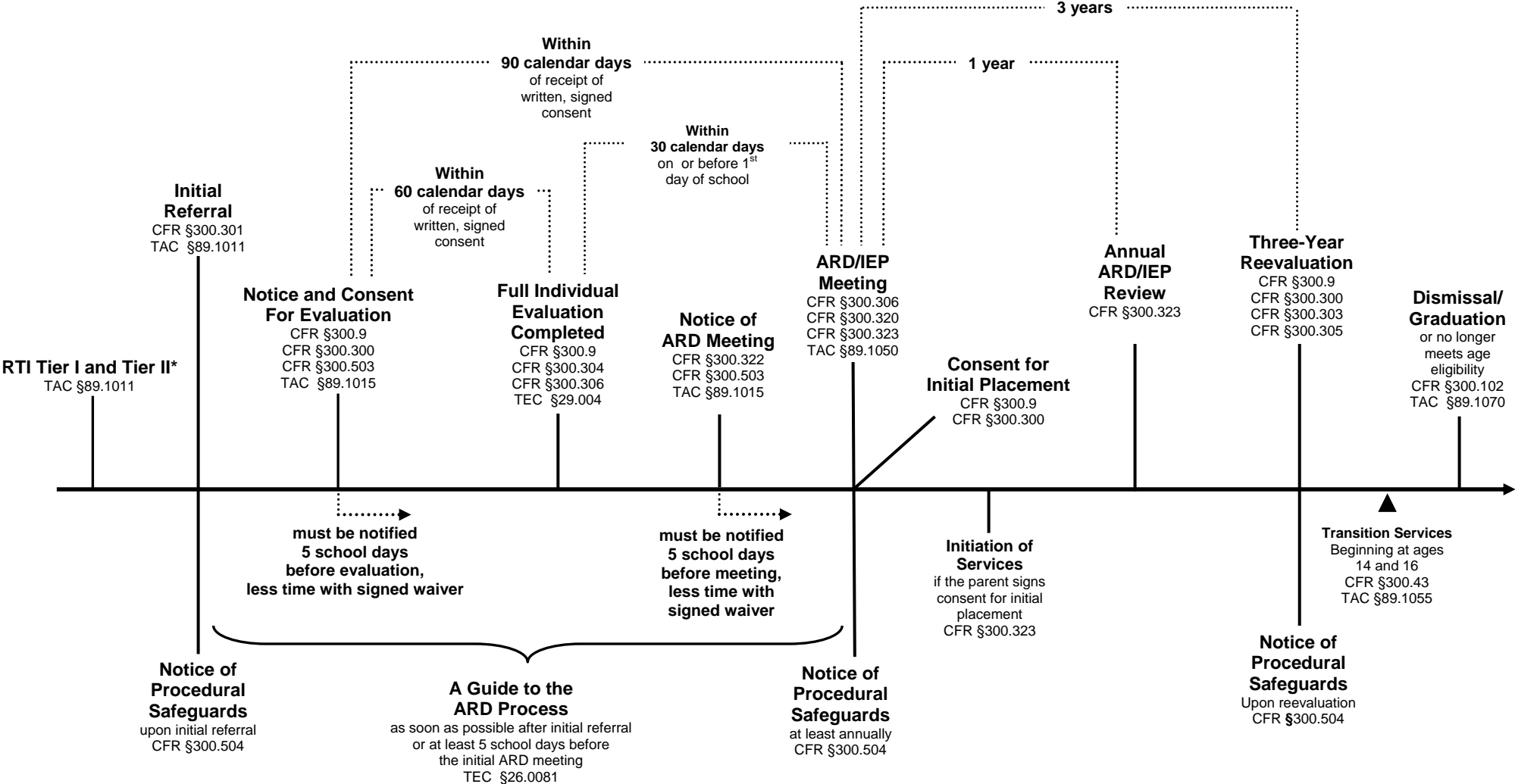
## **W**

### **Ward of the State**

A child who, as determined by the State where the child resides, is a foster child, is a ward of the State, or is in the custody of a public child welfare agency. The term does not include a foster child who has a foster parent who meets the definition of a parent.

# Timeline | Child-Centered Educational Process

[Click here to Return to page 5 Of this document](#)



Notes: \* RTI Tier I and Tier II - See "Response to Intervention NASDSE and CASE White Paper on Rtl", May 2006

Early Childhood Intervention (ECI) transitioning requires a meeting be held 90 days prior to the child's 3<sup>rd</sup> birthday  
 CFR §300.124  
 USC §1437(a)(9)(A)(ii)(II)

- ARD = Admission, Review, and Dismissal
- CFR = Code of Federal Regulations (Individuals with Disabilities Education Act)
- IEP = Individualized Education Program
- RTI = Response to Intervention
- TAC = Texas Administrative Code (Commissioner's Rules)
- TEC = Texas Education Code (State Law)
- USC = United States Code

This page  
intentionally  
left blank

## Internet Resources

### Texas Education Agency

<http://www.tea.state.tx.us/>

TEA Parents Information Line: 1.800.252.9668

### Divisions Within the Special Programs, Monitoring and Interventions

- IDEA Coordination  
(Special Education Programs, Complaints, Deaf Services)  
<http://www.tea.state.tx.us/special.ed/>
- NCLB Program Coordination  
<http://www.tea.state.tx.us/nclb/>
- Program Monitoring and Interventions (Special Education Unit)  
<http://www.tea.state.tx.us/special.ed/monitor/>

### Other Divisions at TEA

- Formula Funding  
<http://burleson.tea.state.tx.us/GrantOpportunities/forms/>  
*Information on special education funding*
- Student Assessment  
<http://www.tea.state.tx.us/student.assessment/>  
*Information on the Texas Assessment Program*

### Technical Assistance

- ESC Special Education Contacts  
<http://www.tea.state.tx.us/special.ed/escinfo/contact.html>  
*First point of contact for special education technical assistance*
- State Board of Educator Certification  
<http://www.sbec.state.tx.us>  
*First point of contact for teacher certification issues*

### Resources on the Web

- State Guidance  
<http://www.tea.state.tx.us/special.ed/guidance>  
*First point of contact for guidance on state policy*
- Parent Resource Network  
<http://www.partnerstx.org/>
- ECI Handbook - English  
<http://www.dars.state.tx.us/ecis/publications/EnglishHandbook.pdf>
- ECI Handbook – Spanish (Guía de eci)  
<http://www.dars.state.tx.us/ecis/publications/SpanishHandbook.pdf>

- Texas Project First  
<http://www.texasprojectfirst.org/>  
*Created by parents, for parents...this web site is a project of the Texas Education Agency and is committed to providing accurate and consistent information to parents & families of students with disabilities*
- Notice of Procedural Safeguards  
<http://fw.esc18.net/frameworkdisplayportlet/ESC18-FW-Resources.aspx>  
*This document is required by federal regulation to be disseminated to parents and adult students at certain times during the special education process. Please note that the link will take you to a menu within the Legal Framework for the Child-Centered Process where you select the document in the appropriate language.*
- Texas Special Education Rules and Regulations Side-by-Side  
[http://fw.esc18.net/frameworkdisplayportlet/SBS\\_1.12.07\\_final.pdf](http://fw.esc18.net/frameworkdisplayportlet/SBS_1.12.07_final.pdf)  
*This document contains the federal regulations (Individuals with Disabilities Education Act), Commissioner's and State Board of Education rules (Texas Administrative Code), and state law (Texas Education Code).*
- Legal Framework for the Child-Centered Process  
<http://framework.esc18.net/>  
*This framework is a template in electronic format that summarizes state and federal requirements for special education by topic.*

**Information about Dispute Resolution Processes (Complaints Investigation, Mediation, Due Process Hearings) facilitated by the Texas Education Agency**

- <http://www.tea.state.tx.us/special.ed/medcom/index.html>
- Complaints  
<http://www.tea.state.tx.us/special.ed/medcom/compinfo.html>
- Mediation  
<http://www.tea.state.tx.us/special.ed/medcom/medinfo.html>
- Due Process Hearings  
<http://www.tea.state.tx.us/special.ed/hearings/>

**Texas Continuous Improvement Process**

- Texas Continuous Improvement Process  
<http://www.tea.state.tx.us/special.ed/tcip/>
- State Performance Plan/Annual Performance Report  
<http://www.tea.state.tx.us/special.ed/spp/>