Parent's Guide to the Admission, Review, and Dismissal Process

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THE TEXAS LEGAL FRAMEWORK
for the Child-Centered Special Education Process

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Table of Contents

INTRODUCTION 2

PARENT'S GUIDE TO THE ADMISSION, REVIEW, AND DISMISSAL PROCESS 3

EARLY CHILDHOOD INTERVENTION 3
SERVICES FOR THREE TO FIVE YEAR OLDS (PRIOR TO KINDERGARTEN ENTRY) 3
HELP FOR THE SCHOOL-AGED CHILD 3
MULTI-TIERED SYSTEM OF SUPPORTS, INCLUDING RESPONSE TO INTERVENTION 4
REFERRAL FOR AN INITIAL EVALUATION 4
PRIOR WRITTEN NOTICE 5
PARENTAL CONSENT 5
EVALUATION PROCEDURES 6
ADMISSION, REVIEW, AND DISMISSAL (ARD) COMMITTEE MEETINGS 7
ELIGIBILITY 8
DEVELOPMENT OF THE INDIVIDUALIZED EDUCATION PROGRAM (IEP) 9
PRESENT LEVELS OF ACADEMIC ACHIEVEMENT AND FUNCTIONAL PERFORMANCE 10
ANNUAL GOALS 10
SPECIAL EDUCATION, RELATED SERVICES, AND SUPPLEMENTARY AIDS AND SERVICES 11
STATE ASSESSMENTS 11
TRANSITION 11
ADULT STUDENTS 13
CHILDREN WITH AUTISM 13
CHILDREN WHO ARE DEAF OR HARD OF HEARING 13
CHILDREN WHO ARE BLIND OR VISUALLY IMPAIRED 14
BEHAVIORAL IMPROVEMENT OR INTERVENTION PLAN (BIP) 14
EXTENDED SCHOOL YEAR SERVICES (ESY) 14
PLACEMENT 15
ARD COMMITTEE DECISION 15
COPY OF THE IEP 16
REVIEW OF THE IEP 16
REEVALUATION 17
INDEPENDENT EDUCATIONAL EVALUATION (IEE) 17
REVOCATION OF CONSENT FOR SERVICES 18
GRADUATION 18
DISCIPLINE 19
EXPEDITED DUE PROCESS HEARING 21
DISPUTE RESOLUTION 21
ADDITIONAL ASSISTANCE 21

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Introduction

This guide was developed by the Texas Education Agency (**TEA**) in response to the requirement in the Texas Education Code §26.0081. This guide is designed to give you, as the parent of a child who is or may be eligible for special education and related services, a better understanding of the special education process and of your procedural rights and responsibilities so that you will be able to fully participate in the decision-making process regarding your child's education.

The Individuals with Disabilities Education Act of 2004 (**IDEA**) is the federal law that governs the special education process. One of the main purposes of IDEA is to ensure that children with disabilities have available to them a free appropriate public education (**FAPE**) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. *Special education* means specially designed instruction to meet the unique needs of a child with a disability. *Related services* are special services needed to support students' special education so they can make progress to meet their academic and functional goals. Related services can include services such as occupational therapy, physical therapy, speech-language therapy, counseling services, orientation and mobility services, and/or transportation services.

Under IDEA, parents' participation is important at every stage of the special education process. This guide describes various activities that may take place during that process. To help you further understand your legal rights under IDEA, the school is required to give you a copy of a document called the *Notice of Procedural Safeguards* (Link: fw.escapps.net) at certain times in the special education process. The document must be provided to you at least once a year and when any of the following circumstances occur:

- Upon referral or your request for an initial evaluation of your child;
- Upon receipt of the first state complaint in a school year;
- Upon receipt of the first request for a due process hearing in a school year;
- On the day a decision is made to make a disciplinary change of placement; and
- Upon your request.

The school is also required to give you a document called the *Overview of Special Education for Parents* form created by the TEA, which is given to you when your child is initially referred for a special education evaluation.

In Texas, a child's eligibility for special education and related services and most of the major decisions about a child's special education program are made by an admission, review, and dismissal (**ARD**) committee. You may also hear this group referred to as an individualized education program (**IEP**) team, which is the term used in federal law. If an ARD committee is formed for your child, you will be a member of that committee.

This guide will be updated periodically as changes to the federal and state special education requirements occur. An electronic version that is printable is available on the Region 18 Education Service Center webpage in the Legal Framework for the Child-Centered Special Education Process (Link: fw.escapps.net).

There are many dates and deadlines in the special education process. In this publication, those important dates and deadlines are described. In addition, an on-line companion document is available to help answer questions about timelines for a special education evaluation. *The Special Education Full and Individual Initial Evaluation (FIIE) Timeline* is available here (Link: https://bit.ly/3V5feWG).

PARENT'S GUIDE TO THE ADMISSION, REVIEW, AND DISMISSAL PROCESS

Early Childhood Intervention

Help is available for families with infants and toddlers who have developmental delays. The agency in Texas that provides these early intervention services is the Texas Health and Human Services Commission. The program for very young children is the Early Childhood Intervention (**ECI**) program. These services are for children under the age of three.

At age three, children with disabilities may become eligible for special education and related services. If so, the child's school district is responsible for ensuring FAPE is made available to the child by the child's third birthday. Not all children who receive ECI services qualify for services provided by a public school. Therefore, at least 90 calendar days before a toddler receiving ECI services turns three years old, a meeting will be scheduled to help the family transition from ECI services to special education and related services, if appropriate. If the child qualifies, special education and related services must be made available to the child on his or her third birthday. *Beyond ECI* is a publication that contains information about the transition from the early childhood program to special education. This publication, *Beyond ECI,* can be found here (Link: bit.ly/35G7y3E).

Children from birth until age 3 years of age who meet eligibility as deaf or hard of hearing or as a child with a visual impairment are entitled to both ECI and special education services from a public school. A public school's special education services would supplement and coordinate with the provision of ECI services to these children.

Services for Three to Five Year Olds (prior to kindergarten entry)

Help is also available for eligible children between the ages of three and five, and those services are referred to as early childhood special education (**ECSE**) services. Some of those children begin receiving services at age three when they transition out of ECI services as mentioned above. However, others are evaluated and identified based on other referrals, such as parent requests when they are concerned about their child's learning and development. ECSE services are provided in different environments, and in limited situations, some children are entitled to dual enrollment in a private school setting and a public-school setting when they are three and four years of age.

Help for the School-Aged Child

If you have a concern about your school-aged (at least age 5 or entry into kindergarten if under 5) child's learning or behavior, the first step is to talk to your child's teacher or the school principal about your concerns. If this step is unsuccessful, you should ask school personnel about making a referral to the campus-based student support team, which is a team of teachers and other personnel who meet regularly to address any learning or behavioral concerns that children are having.

Students who are struggling in the general education classroom should be considered for all interventions and support services at first or referred for a special education evaluation under IDEA in lieu of receiving interventions and support services. If a student continues to have trouble in the general education classroom with the provision of interventions and support services or the student's needs cannot be addressed only through the provision of those interventions and support services, or at any time the school suspects or has reason to suspect a disability

and the possible need for special education and related services, the school must refer the student for a full individual and initial evaluation under IDEA. A student is not required to be provided with interventions and support services for a specific amount of time prior to a referral being made for a full individual and initial evaluation. A referral or request for a full individual and initial evaluation may be made at any time by school personnel, the student's parents or legal guardian, or another person involved in the education or care of a student.

Multi-Tiered System of Supports, Including Response to Intervention

Each school must operate a multi-tiered system of supports (**MTSS**) regarding interventions and support services, which includes academic and non-academic supports, such as behavioral supports. Response to Intervention (**RtI**) is an approach that many schools use in their MTSS. The basic elements of an RtI approach are: the provision of scientific, research-based instruction and interventions in the general education classroom; monitoring and measurement of the child's progress in response to the interventions; and use of these measures of progress to make educational decisions.

The RtI approach, as part of the MTSS, is where each level or tier represents an increasingly intense level of intervention. Interventions provided to a child will be continually adjusted based on progress monitoring until the child is progressing adequately. Children who do not respond to the initial interventions within a reasonable time, as suggested by research, are referred for interventions that are more intensive. Often, your school will have sufficient data after six weeks of intervention to make decisions on next steps (e.g., continue intervention, intensify intervention, refer for evaluation). The timeframe for decision-making depends on the frequency/duration of intervention and the skills targeted.

A child does not need to advance through each tier of the RtI system before a referral for special education is made. Once it is apparent that general education interventions are not sufficient, school personnel should suspect that the child has a disability and must initiate a referral. Important considerations in determining if general education interventions are sufficient include a review of intervention history and the student's progress monitoring data (current rate of progress and movement towards closing achievement gaps). Parents can also request a referral at any time regardless of whether the child is receiving interventions through an RtI system. RtI strategies may not be used to delay or deny a timely evaluation of a child suspected of having a disability under IDEA. More information about the RtI process (Link: bit.ly/3nDMTDu).

Referral for an Initial Evaluation

A school has an affirmative duty to seek your consent and conduct an initial evaluation for special education and related services any time it suspects that your child has a disability and needs special education and related services under IDEA. You may also request an initial evaluation of your child at any time.

If you make a written request to a local educational agency's (**LEA's**) director of special education services or to a district administrative employee, such as a campus principal, for an initial evaluation for special education eligibility, the school must, not later than the 15th school day after the date the school receives the request, either give you: 1) prior written notice of its proposal to conduct an evaluation, a copy of the *Notice of Procedural Safeguards* (Link: fw.escapps.net), a copy of the *Overview for Special Education for Parents* created by the TEA, and the opportunity to give written consent for the evaluation; or 2) prior written notice of its refusal to evaluate your child, a copy of the *Notice of Procedural Safeguards* (Link: fw.escapps.net), and a copy of the *Overview of*

Special Education for Parents form created by the TEA. When a school initiates the referral for an evaluation, the school must also provide you with this information.

Please note that a request for a special education evaluation may be made verbally and does not need to be in writing. Districts and charter schools must still comply with all federal notice requirements and requirements for identifying, locating, and evaluating children who are suspected of being a child with a disability and in need of special education. There is not a specific timeline requirement for responding to verbal requests, but schools are encouraged to follow the same 15-school-day timeline described above.

Prior Written Notice

One of your rights under IDEA is to receive prior written notice about certain actions or inactions concerning your child a reasonable time before the school actually takes the action or refuses to take the action. Specifically, a school must give you prior written notice in your native language or other mode of communication when it:

- Proposes to initiate or change the identification, evaluation, educational program, or educational placement of your child or the provision of a FAPE to your child (including a change prompted by your revocation of consent for the continued provision of special education and related services); or
- Refuses to initiate or change the identification, evaluation, educational program, or educational placement of your child or the provision of a FAPE to your child.

Prior written notice must be given at least five school days in advance of the actions that the school proposes or refuses to take unless you agree to a shorter timeframe. The school must provide you with prior written notice regardless of whether you agreed to or requested the change.

A prior written notice must include the following information:

(1) A description of the action proposed or refused by the school;
(2) An explanation of why the school proposes or refuses to take the action;
(3) A description of each evaluation procedure, assessment, record, or report the school used as a basis for the proposed or refused action;
(4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
(5) Sources for parents to contact to obtain assistance in understanding special education requirements;
(6) A description of other options that the ARD committee considered and the reasons why those options were rejected; and
(7) A description of other factors that are relevant to the school's proposal or refusal.

Parental Consent

There are certain activities in the special education process that cannot take place unless the school obtains your consent. The school must fully inform you of all the information needed to be able to make a good decision, including a description of the proposed activity.

The information must be in your native language or other mode of communication, unless clearly not feasible to provide the information in this way. If there are records to be released, the school must list the records and to whom they will be released.

When you give consent, it means that you understand and agree in writing for the school to carry out the activity for which your consent is sought. It is important that you understand that the consent is voluntary and may be revoked at any time before the activity takes place. However, if you revoke consent for an activity, it is not retroactive.

The following are examples of activities that require your consent:

- Evaluating your child for the first time;
- A reevaluation of your child once every three years, or a more frequent reevaluation if more information is needed, and you or your child's teacher request a reevaluation;
- Providing special education and related services for the first time;
- Excusing an ARD committee member from attending an ARD committee meeting when the meeting involves a modification to or discussion of the member's area of the curriculum or related services; and
- Inviting a representative of any participating agency that is likely to be responsible for providing or paying for secondary transition services.

Evaluation Procedures

If you give your consent for a full and individual evaluation (**FIIE**), the school must provide prior written notice of any evaluation procedures the school will conduct. The school must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about your child, including information that you provide. Your child's school may not use any measure or assessment as the sole criterion for determining whether your child is a child with a disability and for determining an appropriate educational program for your child. Your school must conduct an evaluation of your child in all areas related to the suspected disability to determine if your child has a disability and to determine his or her educational needs. The evaluation process for your child must:

- Include information about your child's academic, developmental, and functional performance;
- Be administered by trained and knowledgeable personnel in accordance with the instructions of the test producer and be administered for purposes for which the assessments are valid and reliable;
- Be administered in your child's native language or other mode of communication unless clearly not feasible to do so; and
- Be unbiased or given in such a way so as not to discriminate against your child, regardless of his or her cultural background, race, or disability.

The trained and knowledgeable personnel involved in an evaluation will vary based on the suspected disability. If dyslexia or a related disorder is suspected, someone with specific knowledge about the reading process, dyslexia and related disorders, and dyslexia instruction will be involved in the evaluation. Additionally, the evaluation must include the areas required in the Texas State Board of Education's Dyslexia Handbook (Link: https://bit.ly/3Z5uXrt) and 19 Texas Administrative Code (TAC) §74.28 (Link: https://bit.ly/3YQcWMe).

The initial evaluation and the resulting report must be completed no later than 45 school days following the date the school receives your written consent. However, if your child has been absent from school three or more school days during the evaluation period, the evaluation period will be extended by a number of school days equal to the number of school days that your child has been absent. The school must give you a copy of the evaluation report

at no cost as soon as possible after its completion but no later than five school days prior to your child's initial ARD committee meeting to determine eligibility.

If your child is under five years of age by September 1 of the school year and not enrolled in public school or is enrolled in a private or home school setting regardless of age, the initial evaluation and the resulting report must be completed no later than the 45th school day following the date the school receives your written consent.

There is an exception to the 45-school-day timeline. If the school receives your consent for the initial evaluation at least 35 but less than 45 school days before the last instructional day of the school year, the written evaluation report must be completed and provided to you by June 30 of that year. However, if your child is absent from school on three or more days during the evaluation period, the June 30th due date no longer applies. Instead, the general timeline of 45 school days plus extensions for absences of three or more days will apply. If the school receives your consent less than 35 school days before the last instructional day of the school year, the general 45 timeline of 45 school days applies, with the same extension for three or more absences during the evaluation period.

If you do not consent to the initial evaluation, the school may, but is not required to, pursue the evaluation by asking for mediation or requesting a due process hearing. If the school decides not to pursue the evaluation, the school does not violate the requirement under IDEA to identify, locate, and evaluate all children with disabilities who are in need of special education and related services. This requirement is referred to as the school's *child find duty*.

Admission, Review, and Dismissal (ARD) Committee Meetings

Within thirty calendar days from the date of the completion of the initial evaluation report, an ARD committee must be formed to consider the report and determine whether your child is eligible for special education and related services. The ARD committee members include the following:

- You, the parent;
- At least one general education teacher of the child who must, when possible, be a teacher who is responsible for implementing a portion of the child's IEP;
- At least one special education teacher or provider of the child;
- A representative of the school;
- A person who can interpret the instructional implications of the evaluation results;
- Other individuals who have knowledge or special expertise regarding the child and are invited by either you or the school;
- Whenever appropriate, the child;
- To the extent appropriate, with your written consent or, after your child reaches age 18, with your adult child's written consent, a representative of any participating agency that is likely to be responsible for providing or paying for transition services;
- A representative from career and technical education, preferably the teacher, if the child is being considered for initial or continued placement in career or technical education; and
- A professional staff member who is on the language proficiency assessment committee, if the child is identified as emergent bilingual.

The ARD committee also includes, as applicable:

- A teacher who is certified in the education of students who are deaf or hard of hearing, if the child is suspected of being or is documented as deaf or hard of hearing;

- A teacher who is certified in the education of students with visual impairments, if the child has a suspected or documented visual impairment;
- A teacher who is certified in the education of students with visual impairments and a teacher who is certified in the education of students who are deaf or hard of hearing, if the child has suspected or documented deaf-blindness; or
- A professional who meets the requirements of TEC, §29.0031(b), and 19 TAC §74.28, including the Dyslexia Handbook, if the student is suspected or identified with dyslexia.

The school must invite you to each ARD committee meeting for your child and make efforts to ensure one or both parents' participation. Written notice of the meeting must be given to you at least five school days before the meeting unless you agree to a shorter timeframe. The written notice must include the purpose, time, location of the meeting, and a list of who will be attending the meeting. If you are unable to speak English, the school must provide the notice in your native language unless it is clearly not feasible to do so. If your native language is not a written language, the school must take steps to ensure that the notice is translated orally or by other means so that you understand the content of the notice.

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

An ARD committee member may be excused from attending part or all of an 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. You must agree in writing to the excusal.

A member of the ARD committee may also be excused from attending an ARD committee meeting when the meeting involves a modification to, or discussion of, the member's area of curriculum or related service if you and the school consent to the excusal in writing and the person being excused submits written input into the development of the IEP before the meeting.

Eligibility

There is a two-part test for determining whether your child is eligible for special education and related services: (1) your child must have a disability eligible under IDEA; and (2) as a result of the disability, your child must need special education and related services to benefit from education. To meet the first part of the two-part test for eligibility, a child between the ages of 3 through 21, except as noted in parenthesis below, must meet the criteria for one or more of the disability categories listed:

- Autism;
- Deaf or hard of hearing (ages birth through 21);
- Deaf-blindness (ages birth through 21);
- Emotional disability;
- Intellectual disability;
- Multiple disabilities;
- Noncategorical early childhood (ages three through five)*;
- Developmental delay (ages 3 through 9)**;
- Orthopedic impairment;
- Other health impairment;

- Specific learning disability;
- Speech or language impairment;
- Traumatic brain injury; or
- Visual impairment (ages birth through 21).

*Noncategorical early childhood will no longer be used beginning with the 2025-2026 school year.
**Eligibility under developmental delay may be made beginning with the 2024-2025 school year.

The ARD committee must make the eligibility determination within 30 calendar days from the date of completion of the initial evaluation report. If the 30th day falls during the summer and school is not in session, the ARD committee has until the 15th school day in the fall to finalize decisions concerning the initial eligibility determination, the IEP, and placement unless the initial evaluation indicates that the child will need extended school year (**ESY**) services during that summer. If ESY services are indicated, the ARD committee must meet as soon as possible after completion of the evaluation report.

Not all struggling learners are eligible for special education and related services. If your child is struggling primarily from a lack of appropriate instruction in reading or math or due to the fact that your child has limited English proficiency, your child must not be determined to be a child with a disability under IDEA. If the evaluation reflects that your child does not have a disability, the campus-based multi-tiered system of academic and behavioral support team may meet and recommend other services or programs in general education to help your child.

If the evaluation shows that your child has a disability, the ARD committee must then address the second part of the two-part eligibility test by deciding whether your child needs special education and related services in order to be involved and make progress in the general education curriculum (i.e., the same curriculum as for nondisabled children).

Initial Provision of Services

If your child qualifies for special education and related services, the school is required to provide your child with FAPE in the least restrictive environment. This is accomplished through the ARD committee's development of an IEP and the school's implementation of the IEP. Before the school can provide any initial special education and related services, however, it must obtain your consent for services. The school must make reasonable efforts to obtain your consent for the initial provision of services. If you do not consent to the initial provision of services, the school may not ask for mediation or request a due process hearing to override your refusal to consent to services. No special education and related services will be provided if you refuse consent. The school is not in violation of its duty to make FAPE available to your child if you refuse consent or fail to respond to a request to provide consent to the initial provision of special education and related services.

Development of the Individualized Education Program (IEP)

The major components of the IEP include:

- Your child's present levels of academic achievement and functional performance (**PLAAFP**);
- Measurable annual goals, including academic achievement and functional performance goals;
- A description of the special education, related services, and supplementary aids and services that will be provided;
- Information regarding how your child will participate in state and districtwide assessments, including a statement of any individual appropriate accommodations that are necessary for your child to take an

assessment, and whether your child needs to take an alternate assessment, instead of the regular Statewide assessment, and why the alternate assessment is appropriate for your child;
- Transition services, when age-appropriate; and
- Other areas that must be considered, and if determined necessary, addressed for children with certain disabilities, needs, or circumstances.

The TEA has developed a model IEP form (Link: bit.ly/3smMLMe). Your child's school may use this model form or may use another form.

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

- The strengths of your child;
- Your concerns for enhancing the education of your child;
- The results of the most recent evaluation of your child; and
- The academic, developmental, and functional needs of your 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 the child's learning or that of others;
- Consider the language needs of the child as those needs relate to the child's IEP when the child qualifies as emergent bilingual; 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 the child is blind or visually impaired;
- Consider the communication needs of each child with a disability, 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;
- Consider whether each child with a disability needs assistive technology devices and services; and
- Address the components required in the Dyslexia Handbook, if applicable, for a student identified with dyslexia and who needs dyslexia instruction.

Present Levels of Academic Achievement and Functional Performance

The IEP must contain a statement of your child's PLAAFP. This statement must include how the disability affects involvement and progress in the general curriculum. If your child is a preschool child, the statement must explain how the disability affects participation in age-appropriate activities.

Annual Goals

The IEP must contain measurable annual goals, including academic and functional goals, designed to meet your child's needs resulting from the disability so that he or she can be involved and progress in the general curriculum. These goals must also address other educational needs that result from your child's disability. The IEP must describe how your child's progress toward the annual goals will be measured as well as when the progress reports will be provided toyou.

Special Education, Related Services, and 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 children without disabilities.

The IEP must include a statement of needed special education, related services, and supplementary aids and services to be provided to your child or on behalf of your 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 IEP must also include the projected date for the beginning of the services and modifications and the anticipated frequency, location, and duration of the services and modifications.

State Assessments

Under federal law, state assessments must be given to all children to determine whether schools have been successful in teaching children the state academic content standards. In Texas, the academic content standards are known as the Texas Essential Knowledge and Skills, which can be found on the TEA website (Link: bit.ly/3bFeuSk). Children with disabilities who receive special education services will take the appropriate state assessments, either the regular assessment or an alternate assessment for children with the most significant cognitive disabilities that is aligned with alternate academic achievement standards. Regardless of whether your child takes the regular assessment or an alternate assessment, the assessment is aligned with the state's challenging academic content standards, and your child must receive appropriate accommodations on state and districtwide assessments, if necessary, as indicated in your child's IEP.

If the ARD committee determines that accommodations are necessary for your child to participate in assessments, the IEP must contain a statement of the appropriate accommodations. Accommodation information from the TEA website (Link: bit.ly/3sq2vht).

If the ARD committee determines that your child must take an alternate assessment instead of a particular state or districtwide assessment, the IEP must include a statement regarding why the child cannot participate in the regular assessment, why the alternate assessment selected is appropriate for the child. The alternate assessment participation form developed by the TEA would be included as part of your child's IEP in this case. In addition, if your child is taking alternate assessments, your child's IEP must also include benchmarks or short-term objectives. Benchmarks or short-term objectives are required only for students with the most significant cognitive disabilities who are taking an alternate assessment that is aligned with alternate academic achievement standards.

Transition

IDEA and state law require that IEPs for older students address transition services. *Transition services* are a coordinated set of activities designed to help the child move from school to post-school activities. The age at which transition planning must begin, however, differs under federal and state law. Therefore, commissioner rules under 19 TAC §89.1055 require both federal and state transition services to begin not later than the first IEP to be

in effect when a student turns 14 years of age. Thus, not later than the first IEP to be in effect when a student reaches 14 years of age, the ARD committee must consider and, if appropriate, address the following issues in the IEP:

(1) Appropriate student involvement in the student's transition to life outside the public school system;
(2) Appropriate involvement in the student's transition by the student's parents and other persons invited to participate by:
    a. The student's parents; or
    b. The school district in which the student is enrolled;
(3) Appropriate postsecondary education options, including preparation for postsecondary level coursework;
(4) An appropriate functional vocational evaluation;
(5) Appropriate circumstances for facilitating a referral of a student or the student's parents to a governmental agency for services or public benefits, including a referral to a governmental agency to place the student on a waiting list for public benefits available to the student; and
(6) The use and availability of appropriate:
    a. Supplementary aids, services, curricula, and other opportunities to assist the student in developing decision-making skills; and
    b. Supports and services to foster the student's independence and self-determination, including a supported decision-making agreement.

Beginning not later than the first IEP to be in effect when the student turns 14 years of age, or younger if determined appropriate by the ARD committee, the IEP must include:

1. Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
2. The transition services, including courses of study, needed to assist the student in reaching the postsecondary goals.

Beginning not later than the first IEP to be in effect when the student turns 18 years of age, the ARD committee must consider and, if appropriate, address the following issues in the student's IEP:

1. Involvement in the student's transition and future by the student's parents and other persons, if the parent or other person:
    a. Is invited to participate by the student or the school district in which the student is enrolled; or
    b. Has the student's consent to participate under a supported decision-making agreement; and
2. The availability of age-appropriate instructional environments, including community settings or environments that prepare the student for postsecondary education or training, competitive integrated employment, or independent living, in coordination with the student's transition goals and objectives.

Your child should attend the ARD committee meeting when transition services and postsecondary goals will be discussed. If your child does not attend the meeting, the ARD committee must take other steps to ensure that your child's preferences and interests are considered. If your child is younger than 18 and at least 14, the ARD committee must also consider involvement in the student's transition by you and other persons invited to participate by you and the school. Additionally, to the extent appropriate, with your written consent or the written consent of the adult student, the school must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

Adult Students

When your child reaches age 18, the child becomes an *adult student*. Adult students have the right to make decisions on their own behalf unless determined by law to be incompetent. At the ARD committee meeting held at least one year before your child turns 18, your child will learn that the right to make education decisions will transfer from their parents to them. Your child's IEP must include a statement to verify that the parent and child have been informed of the transfer of rights. It must also include a statement describing the information and resources shared about guardianship, alternatives to guardianship, and information shared about other supports and services designed to assist in independent living.

When your rights transfer to your adult student, you and your adult student will both receive all future required notices. However, notices of ARD committee meetings are not an invitation for you to attend the meetings. You may only attend meetings if your adult student invites you or gives the school permission to invite you.

Children with Autism

For a child with autism, there are 11 strategies that, in accordance with 19 TAC §89.1055(g), must be considered at least annually, based on peer-reviewed, research-based educational program practices to the extent practicable. When needed, these strategies must be addressed in the IEP. When not needed, the IEP must include a statement to that effect and the basis upon which the determination was made. The additional strategies the ARD committee must consider are:

- Extended educational programming;
- Daily schedules reflecting minimal unstructured time and active engagement in learning activities;
- In-home and community-based training, or viable alternatives;
- Positive behavior support strategies;
- Futures planning;
- Parent/family training and support;
- Suitable staff-to-child ratio appropriate to identified activities;
- Communication interventions;
- Social skills supports and strategies;
- Professional educator/staff support; and
- Teaching strategies based on peer-reviewed, research-based practices.

Children Who Are Deaf or Hard of Hearing

For a child who is deaf or hard of hearing, the ARD committee must 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
- The child's full range of needs, including opportunities for direct instruction in the child's language and communication mode.

Children Who Are Blind or Visually Impaired

Under state law, for a child who is blind or visually impaired, the ARD committee must include within the child's IEP instruction in braille and the use of braille unless the ARD committee determines and documents that braille is not an appropriate literacy medium for the child. The ARD committee's determination must be based on an evaluation of the child's appropriate literacy media and literacy skills and the child's current and future instructional needs.

Under state law, for a child who is blind or visually impaired, the ARD committee must consider the child's need for:

- Compensatory skills, such as braille and concept development, and other skills needed to access the rest of the curriculum;
- Orientation and mobility instruction;
- Social interaction skills;
- Career planning;
- Assistive technology, including optical devices;
- Independent living skills;
- Recreation and leisure enjoyment;
- Self-determination; and
- Sensory efficiency.

Behavioral Improvement or Intervention Plan (BIP)

If the ARD committee determines that a behavioral improvement plan or a behavioral intervention plan (BIP) is appropriate for your child, that plan must be included as part of your child's IEP and provided to each teacher with responsibility for educating your child.

Extended School Year Services (ESY)

The ARD committee must consider whether your child qualifies for ESY services at the annual review of your child's IEP. The need for ESY services must be documented using data collected by the district and you by using formal and informal assessments. Your child qualifies for ESY services if, in one or more critical areas addressed in your child's current IEP goals and objectives where the child has previously demonstrated acquired progress, your 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 previously acquired progress in one or more critical IEP areas in the absence of ESY services.

If the ARD committee determines that your child needs ESY services, the IEP must identify which areas will be addressed during ESY services. The ARD committee is required to discuss the need for ESY services at the child's annual IEP review meeting.

Placement

IDEA requires that a child with a disability be educated in the *least restrictive environment*. This means that your child must be educated with children who do not have disabilities to the maximum extent appropriate. Removal of your child from the general educational environment may only occur if the nature or severity of his or her disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Supplementary aids and services mean aids, services, and other supports that are provided in general education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with children without disabilities to the maximum extent appropriate.

A core part of the special education process involves determining the appropriate educational placement for implementing a child's IEP. Placement refers to the points along the continuum of placement options (i.e., general education classes, special classes, special schools, homebound instruction, instruction in hospitals and institutions) available for a child with a disability. Placement does not refer to the specific physical location or site where the services will be delivered. The ARD committee determines the educational placement based on the child's IEP.

ARD Committee Decision

A decision of the ARD committee concerning the required elements of the IEP must be made by mutual agreement of the committee members if possible. This mutual agreement is called consensus. The ARD committee should work toward consensus, but the school has the ultimate responsibility to ensure that the IEP includes the services that your child needs in order to receive FAPE. It is not allowable to make ARD committee decisions based upon a majority vote. The IEP must indicate whether you and the administrator agree or disagree with the decisions of the ARD committee.

If you disagree with the decisions of the ARD committee, you will be offered a single opportunity to have the committee recess for a period of time not to exceed 10 school days unless you and the school mutually agree otherwise. If you accept the offer to recess and reconvene, the ARD committee must schedule the reconvened meeting at a mutually agreed upon time and place. However, if your child's presence on the campus presents a danger of physical harm to your child or others, or if your child has committed an expellable offense or an offense which may lead to a placement in a disciplinary alternative education program, the ARD committee does not have to recess and reconvene even if you disagree with the decisions of the ARD committee.

During a recess, the ARD committee members must consider alternatives, gather additional information, prepare further documentation, and/or obtain additional resource persons who may assist in enabling the ARD committee to reach mutual agreement. If the ARD committee meets again and you continue to disagree, unless the disagreement involves the initial provision of services for which consent is required, the school must implement the IEP that the school has decided is appropriate for your child.

When mutual agreement is not reached, a written statement of the basis for the disagreement must be included in the IEP. If you disagree with an ARD committee decision, you must be offered the opportunity to write your own statement of disagreement. The school must provide you with prior written notice at least five school days before implementation of the IEP unless you agree to a shorter timeframe.

The ARD committee may also choose to recess for reasons other than failure to reach agreement about all required elements of the IEP.

Copy of the IEP

The school must give you a copy of your child's IEP at no cost. Under 19 TAC §89.1055(r), if you are unable to speak English and your native language is Spanish, the school must provide a written copy or audio recording of your child's IEP translated into Spanish. If you are unable to speak English and your native language is a language other than Spanish, the school must make a good faith effort to provide a written copy or audio recording of your child's IEP translated into your native language. If you are unable to speak English and your native language is not a written language, the school must take steps to ensure that your child's IEP is translated orally or by other means into your native language. A written translation means that all of the text in your child's IEP is translated in written form. The school can provide you with an audio recording of the ARD committee meeting if you were assisted by an interpreter or a translation of the meeting, as long as all content in your child's IEP is orally translated and recorded.

The school must take all reasonable actions necessary to ensure that a parent understands the proceedings at the ARD committee meeting, including arranging for an interpreter for parents who are deaf or hard of hearing or whose native language is other than English.

Review of the IEP

The ARD committee must meet at least once a year to review your child's IEP and determine whether the annual goals are being met. The ARD committee may meet more often than annually to revise your 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;
- Anticipated needs of the child; or
- Other matters.

You may request an ARD committee meeting to discuss educational concerns about your child. The school must either grant your written request to have a meeting or, within five school days, provide you with written notice explaining why the school refuses to convene a meeting. If you are unable to speak English, the school must provide the notice in your native language unless it is clearly not feasible to do so. If your native language is not a written language, the school must take steps to ensure that the notice is translated orally or by other means so that you understand the notice.

You and the school may agree to make changes to the IEP without holding an ARD committee meeting. However, changes to eligibility determination, changes in placement, and manifestation determinations must be made in an ARD committee meeting. If an IEP is changed outside of an ARD committee meeting, there must be a written document reflecting the agreed upon changes. Upon request, the school must provide you with a copy of the revised IEP with the amendments incorporated. Additionally, the school must ensure that the child's ARD committee is informed of those changes.

Reevaluation

Once your child begins receiving special education and related services, periodic reevaluations are required. The school must make reasonable efforts to obtain your consent for a reevaluation. If you fail to respond despite reasonable efforts, the school may conduct a reevaluation without your consent. If you refuse consent for reevaluation of your child, the school may, but is not required to, ask for mediation or request a due process hearing to override your lack of consent for reevaluation. The school does not violate its child find duty or its obligation to evaluate your child if the school does not seek to override your refusal to consent to the reevaluation.

A reevaluation is similar to the initial evaluation. The reevaluation must be comprehensive enough to determine whether your child continues to be a child with a disability and the educational needs of your child. Unless you and the school agree otherwise, a reevaluation of your child's needs must be done at least every three years. No more than one reevaluation may occur within a year unless you and the school agree otherwise.

A review of existing evaluation data (**REED**) must take place as part of an initial evaluation, if appropriate, and a REED must occur as part of any reevaluation of a child under IDEA. A school is not required to obtain your consent to review existing evaluation data. The REED must be conducted by the multidisciplinary team if it is an initial evaluation, or the ARD committee if a re-evaluation, including you, but it does not have to take place in a meeting. The members must review existing evaluation data about your child, including information you provide, to determine the scope of the evaluation or reevaluation.

If your child has already been receiving special education and related services, the ARD committee decides what additional evaluation, if any, is needed to determine whether additions or modifications will be made to your child's special education and related services.

If the ARD committee decides that an additional evaluation is not needed to determine whether your child continues to need special education and related services, the reasons for this decision must be explained to you. After explaining the reasons why the ARD committee has concluded that existing evaluation data are sufficient, the school does not have to conduct a new evaluation to complete a required reevaluation unless you request that the school do so.

Independent Educational Evaluation (IEE)

If you disagree with an evaluation or reevaluation by the school, you may request an IEE at school expense. The school must give you information about where an IEE may be obtained and must give you a copy of the school's criteria for obtaining an IEE. The IEE must meet school criteria. If you request an IEE, the school must, without unnecessary delay, either pay for the IEE or request a due process hearing to show that its evaluation is appropriate. You are entitled to only one IEE at public expense each time the school conducts an evaluation. If the school requests a hearing and the hearing officer decides that the school's evaluation is appropriate, you still have the right to an IEE, but not at the school's expense. Information obtained from an IEE that meets school criteria must be considered by the ARD committee with respect to the provision of a FAPE regardless of whether the school pays for the IEE.

Revocation of Consent for Services

Just as you have the authority to consent to the initial provision of special education and related services, you have the authority to revoke your consent for services. Your revocation of consent must be in writing. Once the school receives your written revocation, it must honor your decision. However, before the school discontinues services, it must provide you with prior written notice that services will stop. Although the school must discontinue services, the school is not required to amend your child's education records to remove any references to your child's previous special education and related services in the past.

If you revoke your consent for the continued provision of special education and related services, your child will not be entitled to any of the protections under IDEA. Furthermore, if you revoke your consent for services, the school may not request mediation, or a due process hearing in an attempt to change or challenge your decision.

Graduation

One of the objectives of the public education system in Texas is that all students will remain in school until they obtain a high school diploma. Students must meet certain standards in order to graduate with a regular high school diploma. For a child who receives special education and related services, the school must follow certain procedures when preparing to graduate a student or terminating the student's special education and related services because the student no longer meets the age eligibility requirements. In addition, the ARD committee plays an important role in some of the decisions related to graduation.

Under IDEA, special education and related services must be available to an eligible child or adult student until he or she graduates or exceeds the age eligibility requirements for a free appropriate public education under state law, which is age 21 in Texas or until the student's 22nd birthday. An adult student receiving special education and related services who is 21 years of age on September 1 of a school year is eligible for services through the end of that school year or until graduation with a high school diploma based upon meeting the curriculum standards and credit requirements applicable to students in general education, whichever comes first.

When your child's or adult student's eligibility for special education is terminating due to graduation with a high school diploma or due to exceeding the age eligibility for special education and related services, the school must give you prior written notice of the termination of services. Furthermore, the school must give the child or adult student a summary of his or her academic achievement and functional performance, which shall include recommendations on how to assist the child or adult student in meeting the child's or adult student's postsecondary goals.

A child or adult student who receives special education and related services may graduate and be awarded a high school diploma by meeting the same curriculum standards and credit requirements applicable to students in general education, as well as passing the required state assessments (which could include situations in which the student attempted but failed to achieve satisfactory performance on no more than two of the required state assessments).

All graduating students who were eligible for special education and related services whose eligibility terminates because of the award of a high school diploma must be provided with a summary of academic achievement and functional performance. This summary must consider, as appropriate, the views of the parent and student and written recommendations from adult service agencies on how to assist the student in meeting postsecondary goals. For some students, the summary must include an evaluation of the student.

A child or adult student who meets requirements for graduation in accordance with 19 TAC 89.1070(b)(2) or (b)(3)(A), (B), or (C) and is under age 22 is still entitled to a free appropriate public education under IDEA. The child may, under some circumstances, be able to return to school and receive services through the end of the school year in which he or she reaches age 22. If your child seeks to return after having met requirements for graduation and been awarded a diploma, the ARD committee must determine the needed educational services.

Discipline

There are special rules that apply to disciplinary actions taken against a child with a disability. Generally, a child with a disability cannot be removed from his or her current educational placement for more than 10 consecutive school days if the misconduct is related to his or her disability. In addition, certain disciplinary situations that arise with regard to a student with a disability trigger a requirement to hold an ARD committee meeting.

Short-Term Removals

School officials may remove your child from his or her current educational placement if your child violates the code of student conduct. This removal can be to an appropriate interim alternative educational setting (**IAES**), another setting, or suspension for not more than 10 consecutive school days to the extent that the disciplinary measure is applied to children without disabilities, and for additional removals of not more than 10 consecutive school days in that same school year, for separate incidents of misconduct as long as those removals do not constitute a change in placement. This is often referred to as the *10-day rule*.

Disciplinary removals for 10 consecutive school days or less do not trigger the requirement to hold an ARD committee meeting, unless the removal constitutes a change in placement. The school district does not provide services to a child with a disability or a child without a disability who has been removed from his or her current placement for 10 school days or less in that school year.

Cumulative Removals Totaling 10 Days or More

School officials may order additional short-term removals in the same school year for separate incidents of misconduct, provided that these removals do not constitute a change of placement. After your child has been removed for 10 cumulative school days in the same school year, if the current removal is not for more than 10 consecutive school days and is not a change of placement, the school must provide services so as to enable your child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in your child's IEP. School personnel must consult with at least one of your child's teachers to decide which services are needed. Note that IDEA requires at 34 CFR §300.530(d)(5) that the ARD committee determines appropriate services if the removal is a change in placement.

Change of Placement

A removal of a child with a disability from his or her current educational placement is a *change of placement* if the removal is for more than 10 consecutive school days, or the child has had a series of removals that constitute a pattern. A pattern of removals occurs when:

- The removals total more than 10 school days in a school year;
- The child's behavior is largely similar to the child's behavior in past incidents that resulted in the series of removals; and

- Other factors like the length of the removals, 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 a pattern of removals amounts to a change of placement. You may challenge the school's decision about whether a pattern of removals has occurred through a due process hearing and judicial proceedings.

If the school proposes a removal that will constitute a change of placement, school officials must notify you of that decision and provide you with a copy of the *Notice of Procedural Safeguards* (Link: fw.escapps.net). This must be done on the date on which the decision is made to change the child's placement. In addition, the school must hold an ARD committee meeting to conduct what is called a manifestation determination. The manifestation determination meeting must occur within 10 school days of the date on which the decision is made to change the child's placement.

Manifestation Determination

When conducting a *manifestation determination*, the ARD committee must review all relevant information in your child's file, including the IEP, any teacher observations, and any relevant information provided by you to determine:

- If the conduct in question was caused by, or had a direct and substantial relationship to, your child's disability; or
- If the conduct in question was the direct result of the school's failure to implement the IEP.

If the ARD committee determines that either of these conditions is met, then the conduct is a manifestation of the child's disability. If the ARD committee determines that neither condition is met, then the conduct is not a manifestation of the child's disability.

When Conduct is a Manifestation

If the conduct is a manifestation of your child's disability, the ARD committee must either:

- Conduct a functional behavioral assessment (**FBA**), unless the school had conducted an FBA before the behavior that resulted in the change of placement occurred, and implement a BIP; or
- If a BIP is already in place, review the BIP and modify it as necessary to address the behavior.

In addition, the ARD committee must return your child to the placement from which your child was removed unless:

- You and the school agree to a change of placement as part of the modification of your child's BIP; or
- Your child's violation of the code of student conduct involves one of the special circumstances described below.

If the ARD committee concludes that your child's conduct was caused by the school's failure to implement the IEP, the school must take immediate steps to remedy the deficiencies.

When Conduct is Not a Manifestation

If the conduct was not a manifestation of your child's disability, school personnel may discipline your child in the same manner as other children, except appropriate educational services must continue. The child's ARD committee will determine the IAES in which the child will be served.

Special Circumstances

School personnel may remove your child to an IAES for up to 45 school days without regard to whether the behavior is a manifestation of his or her disability in cases where your child:

- Carries or possesses a weapon at school, on school premises, or at a school function;
- Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function; or
- Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function.

The ARD committee will determine the IAES in which the child will be served.

Protections for Children Not Yet Determined Eligible for Special Education and Related Services

If your child has not been determined to be eligible for special education and related services but has engaged in behavior that violated a code of student conduct, your child is entitled to the procedural protections in IDEA if the school had knowledge that your child was a child with a disability before the behavior occurred. Additional information about this topic is found in the *Notice of Procedural Safeguards* (Link: fw.escapps.net).

Expedited Due Process Hearing

If you disagree with a decision regarding placement in an IAES or manifestation determination, you may request an expedited due process hearing. The school may also request a due process hearing if the school wants to challenge your child's return to school after the ARD committee has determined that his or her conduct was a manifestation of his or her disability.

Dispute Resolution

From time to time, disputes may arise relating to the identification, evaluation, educational placement, or the provision of a FAPE to your child with a disability. If disagreements arise, you are strongly encouraged to work with school personnel to resolve differences as they occur. You may ask the school about what dispute resolution options it offers for parents. The TEA offers four formal options for resolving special education disagreements: state IEP facilitation, mediation services, the special education complaint resolution process, and the due process hearing program.

Information about the TEA's dispute resolution options may be found in the *Notice of Procedural Safeguards* (Link: fw.escapps.net). Additional information on special education dispute resolution may be found on the TEA's website (Link: bit.ly/3bL6n73).

Additional Assistance

For a complete listing of the definitions of acronyms found in this document, visit the Legal Framework website (Link: bit.ly/3oIsKNS).

Copies of this document are also available in other languages on the SPEDTex website (Link: bit.ly/3qorCzg).

You may also request a copy from the school counselor or the school's special education department.