Lexington Independent School District

OPERATING GUIDELINES

FOR

SPECIAL EDUCATION SERVICES
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Lexington Independent School District
The special education programs in the Lexington Independent School District operate under local district board policies. This operational guidelines manual is to clarify and support local district policy, State Board of Education and Commissioner’s Rules for Special Education Services, and 34 Code of Federal Regulations (Individuals with Disabilities Education Act) IDEA - Part 300. The local district board approved policy manual may be found in the office of the superintendent, the administrative office of each school, and the special education office. The list on the next page includes the most frequently referenced policy sections which relate to special education services.
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REFERRAL PROCESS

I. INITIAL REFERRAL TO SPECIAL EDUCATION (§89.1011 & §89.1001c)

Consideration of a student’s need for special education is initiated by a referral. Referral of students for a full and individual initial evaluation for possible special education services shall be a part of our district’s overall general education referral or screening system and child find system. Prior to referral, students experiencing difficulty in the general classroom should be considered for all support services available to all students, such as tutorial, remedial, compensatory, and other services. If the student continues to experience difficulty in the general classroom after the provision of interventions, district personnel must document the provision of interventions and refer the student for a full and individual initial evaluation. Referrals for a full and individual initial evaluation may be initiated by school personnel, the student’s parent or legal guardian, physician, community agencies, other appropriate individuals involved in the care or education of the student, or as a result of any district-wide testing or screening program which is provided for all students. The referral for a full and individual initial evaluation must be completed in accordance with the Texas Education Code, §29.004, related to the 60 calendar day time line. (see page 102)

A. Who may be referred for special education services?

All students ages birth through twenty-one (0-21) residing within the Lexington Independent School District who are suspected of having a disability may be referred for special education appraisal.

1. For school-age children, the suspected disability must be interfering with the student’s educational progress in order to warrant a referral.
2. Students who are not currently enrolled in a school may also be referred by the principal of the student’s neighborhood school.
3. Students who are new to a district and have been receiving special education services in the student’s previous district will not go through the referral process (see Transfers in this section and in ARD/IEP section - see Transfers/Temporary Placement).

B. Membership of the Student Assistance Team (SAT)

1. The membership in the district’s overall general education screening system is determined by local campus administration unless specified in district policy.
2. Special education personnel may participate on, but not be assigned primary responsibility for, the local campus Student Assistance Team (SAT).
3. Special education personnel may be involved in collecting referral data ONLY for the following students:
   a. pre-kindergarten students
   b. students with multiple-disabilities
   c. eligible students with disabilities new to a district
   d. students referred to special education during the summer
   e. students who are hospitalized, institutionalized, or admitted to treatment centers.

C. General Education Responsibilities

1. The general education teacher will consider the student experiencing difficulty in the general classroom for all support services available to all students such as tutorial, remedial, compensatory, and other services.
2. The general education teacher will discuss, consider, and document student educational concerns and all educational alternatives and options available and those tried and reasons why those tried did not work.

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

The principal will determine the manner in which referral packets are given to teachers. LISD recommends that the principal discuss possible instructional alternatives with the teacher prior to the initiation of a referral.

D. Timeline - Referral to Evaluation

A written report of a full and individual evaluation of a student for purposes of special education services shall be completed not later than the 60th calendar day following the date on which the LISD receives written consent for the evaluation signed by the student’s parent or legal guardian. (HB1339-summer 2003) The evaluation shall be conducted using procedures that are appropriate for the student’s most proficient method of communication.

E. Special Education Department Responsibilities

1. The evaluation person marks date received on the packet once the information packet is complete.
2. The evaluation person determines evaluation needed and contacts appropriate special education personnel to assist and/or conduct evaluation if student is suspected of having an auditory impairment (AI), visual impairment (VI), bilingual, etc.
3. The evaluation person conducts the evaluation and completes the full and individual written report (FIE). The appropriate campus personnel are notified when the report is completed.

F. Scheduling the ARD/IEP Committee Meeting

The person designated by the principal on each campus notifies principal that the data collection is complete and ready for the ARD/IEP committee’s review. The designated person schedules the ARD/IEP meeting and Notice of ARD is sent. (See Procedural Safeguards, section 7 of this manual, for information on Notice.)

TIMELINE: The ARD/IEP committee must meet within thirty (30) calendar days from date of written evaluation report (Full and Individual Evaluation).

II. TRANSFER STUDENTS

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

III. REFERRALS FOR SPECIFIC AREAS

A. Adapted Physical Education (34 CFR §300.307)

1. Procedures for Requesting an adapted physical education (APE) Evaluation
a. All students referred for adapted physical education evaluation must have an identified disability.
b. The request for an adapted physical education evaluation must be made during the referral process, by the evaluation staff, by a teacher or by the parent and discussed in a pre-assessment ARD/IEP Committee.
c. The evaluation person will monitor the referral and forward the request for APE screening/evaluation to the appropriate person.

2. A written report from the adapted physical education evaluation person will be made available for ARD/IEP committee consideration and action.

B. Assistive Technology Team  (34CFR §300.5)

1. Assistive technology device and service definition: Assistive technology devices or services will be made available to students with disabilities if required as a part of the student’s special education, related service or supplemental aids and services as determined by the ARD/IEP committee.
   a. The term assistive technology device means any item, piece of equipment, or product system, whether acquired commercially, off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of children with disabilities.
   b. The term assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:
      (1. the evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child’s customary environment;
      (2. purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
      (3. selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;
      (4. coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
      (5. training or technical assistance for a child with a disability or, if appropriate, that child’s family; and
      (6. training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of children with disabilities.

2. Referral to the Assistive Technology Team (see also FIE - section 2)
   a. The ARD/IEP Committee will first review the recommendations from the FIE (Full and Individual Evaluation). Assistive technology needs will be discussed and consideration given to the competencies, strengths and weaknesses, and recommendations from the evaluation report.
   b. The ARD/IEP Committee may recommend additional evaluation by the technology assistance team. The team may include any of the following professionals: Occupational Therapist, Physical Therapist, Speech Pathologist, Diagnostician, Vision Teacher, others as needed.
   c. If the technology assistance team is requested for an evaluation, the team member(s) will make written recommendations in an evaluation report for assistive technology services or devices including specific modifications which are needed to implement the student’s individual education plan. The ARD/IEP Committee will then consider the recommendations.
d. Recommendations for assistive technology for all students from the ARD/IEP Committee meetings will be logged and tracked by the campus designee to assure follow up occurs in ordering of material, any training required, etc.

C. Referrals for Homebound Instruction

1. Parent Responsibilities:
   a. Contact the campus principal/counselor.
   b. Receive a special education homebound referral packet which includes a copy of the Procedural Safeguards document.
   c. Have a doctor complete the appropriate homebound medical form obtained from school/special education.
   d. Complete and return the appropriate forms to the campus principal/designee.

2. Principal/Designee Responsibilities:
   a. Inform the parent of referral procedure
   b. Obtain referral packet forms
      (1. referral to special education
      (2. homebound forms
   c. Gather and document:
      (1. document parent receipt of Procedural Safeguards document,
      (2. completed parent information forms,
      (3. completed Homebound Medical form,
      (4. information from permanent record and/or other school records,
      (5. and remainder of the referral packet
      (6. give completed information to the diagnostian
d. When above forms are complete, send to LISD Special Education Coordinator.
e. Assign building coordinator who is responsible for securing:
   (1. student texts
   (2. teacher manuals/keys

3. Diagnostian Responsibilities:
   a. Communicate with LISD Coordinator regarding Homebound referral.
   b. Complete required evaluation using information from doctor, school records, parent information, etc.
   c. Schedule ARD/IEP committee meeting with homebound teacher and invite appropriate persons to attend.
   d. Verify ARD notice is sent. Complete the ARD/IEP.

D. Limited English Proficient (LEP) Referral

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

2. Speech only
   a. (LANGUAGE) The language proficiency assessment (ex. LAS, IDEA) should be considered with regard to the following:
      (1. If the student is proficient in English and has a lower proficiency in Spanish, the normal procedures for the speech pathologist evaluations are followed.
(2. If the student is proficient in Spanish and not in English, typically this would not be an appropriate referral. The speech pathologist will write the evaluation report (using information from the cumulative folder) and proceed to ARD.

(3. If the student is barely proficient in both languages, consult with the Coordinator or Director of LISD before proceeding.

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

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

3. Other Referrals (LD, MR, etc.)
   a. The language evaluation (ex. LAS, IDEA) should be considered with regard to the following:
      (1. If the student is proficient in English and lower in Spanish, the usual procedures for testing are followed.
      (2. If the student is proficient in Spanish and not in English, typically this will be an inappropriate referral for a Learning Disability. This type of profile is usually an indication that the child needs more time to learn English. The diagnostician will write the CIA or full and individual evaluation report (using information from the cumulative folder) and proceed to ARD. If the student is to be considered for a physical, mental or emotional disability, proceed with caution.
      (3. If the student is barely proficient in both languages, consult with the Coordinator or Director of LISD before proceeding.
      (4. If the student is above proficient in both languages, normal procedures in English may be followed.

b. If the student is not proficient in either language, a bilingual assessment should be requested. Consideration should be given to the following:
   (1. Students who have been in English speaking schools for less than two years should be given careful consideration relative to referral.
   (2. If the student has received English instruction for two or more years and there is no evidence of previous academic instruction in Spanish or another language, the LPAC may recommend testing in English or use of an interpreter.

E. Preschool Referrals (includes CFR §300.132 and Agreement Memorandum, spring ‘99)

1. Referral from ECI (Early Childhood Intervention) Programs (all decisions will occur collaboratively between ECI staff, school staff, and the parents)
   a. LISD will complete the child centered process including evaluation and ARD. Review of existing evaluation data, all time lines and referral requirements will be followed.
      (1. when invited by the ECI service provider, the LISD representative will attend a face to face meeting held at least 120 days prior to the eligible child’s third birthday
      (2. LISD will accept a referral approximately 90 days prior to the student’s third birthday.
      (3. To avoid a gap in services and to assure a smooth effective transition to the preschool program, LISD will accept appropriate evaluations from an infant program serving children with disabilities.
      (4. LISD will complete the referral, evaluation, and ARD/IEP process within the required time lines. (Typically, this occurs within three weeks, however, should not exceed six weeks from the date of referral.)
(5.) eligible preschool children will receive the necessary services as determined by the ARD/IEP committee beginning on their third birthday.

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

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

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

(2.) The LISD has the capacity to provide services to the student throughout the year.

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

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

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

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

(2.) the LISD will follow up with the ECI program to assure evaluation is completed within 45 calendar days from the date the referral is received,

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

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

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

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

F. Referrals from Private/Nonpublic Schools

All state requirements concerning referral, evaluation, and determination of eligibility are applicable to students placed by their parents in private/nonpublic schools once the students have been referred for special education.

1. Parent Responsibilities:

a. Contact the appropriate neighborhood campus and initiate a referral.

b. Referrals will be accepted only from residents of LISD. (Students who live outside of LISD but attend a private school within the boundaries of LISD must be referred to the student’s home district where they reside overnight.)

c. Provide any documentation available to the campus Principal or counselor regarding the child’s suspected disability.

d. Give the Teacher Information Form from the referral packet to the teacher at the private school.

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

NOTE: The same referral time lines apply.

3. Evaluation Person Responsibilities:
   a. To the maximum extent possible, LISD shall use referral and evaluation information from the private school’s records in order to avoid unnecessary duplication of effort or services.
   b. Coordinate and/or administer additional recommended evaluation.

G. Psychological Evaluation

LISD recommends that the general education teacher consult with the licensed specialist in school psychology or psychologist prior to making a referral if at all possible.

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

2. Student is Not Currently Receiving Special Education Services
   a. The general education teacher will follow the Student Assistance Team (SAT) process, completing all required forms including notifying parents of their Procedural Safeguards, providing Notice of Evaluation and obtaining Consent for Evaluation.
   b. The general education campus teacher or campus designee will submit the completed referral packet to the special education department.
   c. Time line: A written report of a full and individual evaluation of a student for purposes of special education services shall be completed not later than the 60th calendar day following the date on which the referral for evaluation was initiated by school personnel, the student’s parent or legal guardian, or another appropriate person. The evaluation shall be conducted using procedures that are appropriate for the student’s most proficient method of communication.

The 60 calendar day timeline requirements for the special education department processing and evaluation includes the time used by general education to complete the referral. Data should be gathered and sent to special education evaluation person as soon as possible, no later than 30 school days from the date that the referral is initiated.
H. OT/PT Therapy Referral Process

A student must be eligible for special education services before he can be referred for a physical or occupational therapy screening or evaluation. A student may be referred by the ARD/IEP meeting after review of existing evaluation data and planning the evaluation to be completed. Also, teachers, parents, physicians, and others may request referral through the ARD.

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

2. The diagnostician is the designated person to monitor the referrals and assure notice and consent has been given to the parents. The diagnostician will submit the following forms to the therapist when referring a student:
   a. Notice and Consent for a Full and Individual Evaluation copy;
   b. OT/PT Therapy Referral Form (completed by parent, teacher, counselor, diagnostician, etc.);
   c. OT/PT Medical Referral Form. (This form must be completed by a physician with approval for therapy services to be provided. This must be received by the therapist before any services can be initiated.

   NOTE: (see page 201 – Review of Existing Evaluation Data)
   A medical is required for evaluation or therapy services.

3. Description Of Therapy Services
   a. Screening
      This is a brief informal observation may be used to determine if a formal evaluation is necessary. It is also used as a tool to provide helpful information about the student to the staff and parents. An ARD/IEP meeting is not necessary when a screening is completed. A parent/teacher conference may be held to discuss screening results if necessary.
   b. Evaluation
      The therapist will look at and observe the student, using standardized tests, and clinical evaluations. The evaluation will address and analyze areas that affect the student’s ability to benefit from instruction. Areas included in the evaluation are:
      (1. sensorimotor functioning
      (2. neuromuscular abilities
      (3. self-care skills
      (4. vocational skills
      (5. school/work activities
      (6. perceptual-motor skills
      
The therapist will complete the evaluation and make appropriate recommendations for the educational setting. Services will be determined by the child’s need and how that need can best be met within the school, home, and community settings. An ARD/IEP meeting will be called to discuss therapist’s evaluation and recommendations.

Occupational Therapy

Occupational therapy services include the evaluation, consultation, and/or direct services to individuals whose ability to cope with the tasks of living and learning is threatened or impaired by developmental deficits, environmental or sensory deprivation, physical injury, illness, or psychological disability.
Physical Therapy
Physical therapy is the art and science of evaluation, program planning, and implementation of physical or corrective conditions resulting from birth, illness, or injury. Physical therapy includes therapeutic exercise programs designed to develop or restore neuromuscular and/or sensorimotor function, relieve pain, control postural deviations, minimize disabilities, and maintain maximal performance levels within the individual’s capabilities.

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

- Holding head and/or body upright
- Using arms and hands in manipulative tasks
- Using only one hand when both are preferable
- Tightness or weakness in the arms or legs
- Assuming and maintaining sitting and/or standing without physical assistance.
- Impaired walking or using a gait that limits independence in classroom or campus mobility
- Severe eye-hand coordination
- Oral function (chewing, sucking, swallowing, and drooling)
- Self-care that limits independence in classroom or campus (assistance required with dressing, feeding, toileting, personal hygiene, etc.
- Uncoordination of movement (unable to walk balance beam, frequent falling)
- Limited mobility in school (architectural barriers - stairs, narrow doorways).
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I. **INITIAL EVALUATIONS** *(34 CFR §300.320 and §300.531)*

LISD will ensure that a full and individual evaluation is conducted for each student being considered for special education and related services. The evaluation will be completed before the initial provision of special education and related services and will:

A. determine if the student is a “student with a disability” in accordance with federal and state requirements; and

B. determine the educational needs of the student.

In implementing the requirements above, LISD ensures that:

A. the evaluation is conducted in accordance with the procedures in federal and state law,

B. the results of the evaluation are used by the ARD/IEP committee in developing an individualized education program.

II. **DETERMINATION OF NEEDED EVALUATION DATA** *(34 CFR §300.533)*

As part of an initial evaluation (if appropriate) and as part of any reevaluation, a team that includes individuals required in 34 CFR §300.344 *(same as ARD/IEP members-see Section 4)*, and other qualified professionals, as appropriate, will -

A. **Review existing evaluation data** on the child, including but not limited to:

1. evaluation and information provided by the parents of the student,
2. current classroom based evaluations and observations, and
3. observations by teachers and related services providers, and
4. group evaluation such as TAKS, IOWA, etc., and
5. other school records such as attendance, discipline reports, etc..

B. On the basis of that review, including input from the child’s parents, the team of qualified professionals or the ARD/IEP team will identify what additional data, if any, are needed to determine:

1. whether the child has a particular category of disability, as described in federal law 34 CFR§300.7, or in case of a reevaluation of a student, whether the student continues to have a disability,
2. the present levels of performance and educational needs of the student,
3. whether the student needs special education and related services, or in the case of a reevaluation of a student, whether the student continues to need special education and related services; and
4. whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP of the student and to participate, as appropriate in the general curriculum.

C. LISD will provide Procedural Safeguards, Notice / Consent and administer tests and other evaluation materials as may be needed to produce the data identified in A. and B. above.
D. If determination under paragraph A. is that no additional data are needed to determine whether the student continues to be a student with a disability, the LISD will notify the student’s parents:
   1. of that determination and the reasons for it; and
   2. of the right of the parents to request a full and individual evaluation to determine whether the student continues to be a student with a disability.

E. LISD is not required to conduct an evaluation described in paragraph D. 2. above unless requested to do so by the student’s parents.

F. If the ARD/IEP committee determines additional data is not needed and documents that determination, the date of the ARD/IEP committee meeting becomes the new evaluation date.

III. TIMELINE

A written report of a full and individual evaluation of a student for purposes of special education services shall be completed not later than the 60th calendar day following the date on which the LISD receives written consent for the evaluation signed by the student’s parent or legal guardian. (HB1339-summer 2003) The evaluation shall be conducted using procedures that are appropriate for the student’s most proficient method of communication.

The ARD/IEP committee shall make its decision regarding students referred for a full and individual evaluation within 30 calendar days from the date of the completion of the written evaluation report. When the thirtieth (30th) day occurs during the summer when school is not in session, the ARD/IEP committee shall have until the first day of classes in the fall to finalize decisions concerning the initial eligibility determination, the IEP, and placement, unless the full and individual evaluation indicates the student will need extended school year services during the summer.

IV. PURPOSE

The purpose of the full and individual evaluation is to:

A. determine eligibility and the presence or absence of a physical, mental, or emotional disability, which may be contributing to a student’s educational need;

B. determine the presence or absence of a significant educational deficit and the need for special education instructional and/or related services;

C. identify specific learning competencies in instructional and related service areas;

D. make recommendations for determining the grading criteria and procedures for participation in extracurricular activities; and

E. provide information relative to the appropriate mastery level or levels at which the student should be expected to achieve in order to receive passing grades in all content areas of instruction.

V. DOCUMENTATION
A. The LISD will maintain documentation concerning referral and a full and individual evaluation in the special education eligibility folder. Personnel responsible for the referral and the evaluation will sign and date referral forms and sign and date written evaluation reports.

B. Tests and other evaluation materials and procedures used for the purposes of evaluation and placement of children with disabilities must be selected and administered so as not to be racially or culturally discriminatory.

C. A copy of the FIE (Full and Individual Evaluation) is given to the parent.

WRITTEN REPORT (34 CFR §300.543)

Lexington Independent School District appraisal personnel will prepare a written report of the results of the evaluation which will address the presence or absence of those symptoms or conditions included in the specific eligibility criteria for the disability for which the student is being assessed.

A. The report will include a statement of:

1. whether the student has a specific disability and meets eligibility criteria;
2. the basis for making the determination;
3. the relevant behavior noted during the observation of the child;
4. the relationship of that behavior to the student’s academic functioning;
5. the educationally relevant medical findings, if any;
6. whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related service;
7. the type and severity of the impairment and the functional implications for the educational process;
8. the determination of the team concerning the effects of environmental, cultural, or economic disadvantage;
9. sources of data for all areas assessed;
10. If an evaluation is not conducted under standard conditions, information about the extent to which the evaluation varied from standard conditions, such as the qualifications of the person administering the test or the method of test administration, needs to be included in the evaluation report.
11. For students needing or receiving adapted physical education, an adapted physical education evaluation is conducted.

B. Each team member will certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions.

RELATED SERVICE EVALUATION REPORT

1. The evaluation report for related services includes:
   a. learning competencies which identify the need for the related service;
   b. documentation that the service will enable the student to benefit from instruction,
   c. a recommendation for the specific service(s) to be offered.

2. The evaluation report and supporting data used to develop the current IEP are in the eligibility folder and are no more than three years old.

VI. OBSERVATION (34 CFR §300.542)
A. At least one team member other than the student’s regular teacher will observe the student’s academic performance in the general classroom setting.

B. In the case of a student of less than school age or out of school, a team member will observe the student in an environment appropriate for a student of that age.

VII. EVALUATION OF PHYSICAL, MENTAL AND EMOTIONAL CONDITIONS

A. Language Dominance

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

B. Language Proficiency

The evaluation team must determine the student’s most proficient method of communication. The language proficiency information must indicate the student’s skill in understanding and using both receptive and expressive domains, such as oral and written language, reading comprehension, and listening comprehension, when appropriate. Proficiency in both English and the other language(s) must be addressed for Limited English Proficient (LEP) students.

C. Physical

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

D. Emotional/Behavioral

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

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

F. Intellectual

The evaluation of an individual’s intellectual functioning must include an evaluation of verbal ability or performance or both. Intellectual functioning should be the last factor assessed, since the student’s performance in this area should be analyzed and interpreted in light of all the other data.

While the adaptive behavior of all students must be considered to some degree, formal measures of adaptive behavior will be required only when a student is being assessed for mental retardation.

Intelligence must always be addressed. An informal evaluation of intelligence may be used to determine intellectual functioning as a part of eligibility for:

1. visual impairment,
2. orthopedic impairment,
3. deaf-blindness,
4. speech impairment (if SI only).

Some examples of informal evaluation include: achievement test results, teacher observations, adaptive behavior, grades, etc.

VIII. EVALUATION OF LEARNING COMPETENCIES (ACADEMIC PERFORMANCE)

The evaluation will include:

A. criterion-referenced or curriculum-referenced assessments designed to aid in the development of the student’s IEP;

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

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

IX. ASSISTIVE TECHNOLOGY DEVICES AND SERVICES (34 CFR §300.5 and §300.308)

Lexington Independent School District will ensure that assistive technology devices or assistive technology services, are made available to a student with a disability if required as a part of special education, related services, or supplementary aids and services. Assistive technology devices and services are used to adapt conditions to improve the student’s functioning when needed to implement the student’s IEP. The ARD/IEP committee will review recommendations for assistive technology from the Full and Individual Evaluation and include in the IEP those devices and services determined to be educationally necessary.
A. The Full and Individual Evaluation will include formal or informal evaluations and recommendations regarding the need for assistive technology devices or services.

B. The Full and Individual Evaluation report will address assistive technology needs based on competencies identified the evaluation. The report will specify one of the following:

1. assistive devices and services are not recommended for this student at this time;
2. referral to the assistive technology team is recommended; (see Referral Section)
3. referral to the assistive technology team has been made (refer to the report for detailed recommendations - specify the date of the report you are referencing);
4. other referrals if recommended;
5. modifications, which have been recommended.

C. Assistive technology services are potentially available to all students with disabilities, not just those with sensory impairments, or severe physical disabilities. Categories of assistive technology include:

1. aids to improve self-help skills and encourage independence,
2. electronic and non-electronic devices that enhance communication skills, instructional material aids,
3. sensory aids,
4. environmental control systems, and
5. homework modifications.

X. EVALUATION PROCEDURES (34 CFR §300.531 and 300.532)
Before any action is taken with respect to the initial placement of a child with a disability in a program providing special education and related services, a full and individual evaluation of the child’s educational needs must be conducted in accordance with requirements below:

LISD ensures the following:

A. Tests and other evaluation materials used to assess the student:

1. are selected and administered so as not to be discriminatory on a racial or cultural basis;
2. are provided and administered in the student’s native language or other mode of communication, unless it is clearly not feasible to do so;
3. are standardized tests that have been validated for the specific purpose for which they are used;
4. are standardized tests that are administered by trained personnel in conformance with the instructions provided by their producer; and
5. are maintained in the student’s legal folder
   a. page(s) containing test scores are retained.
   b. pages containing questions/answers may be destroyed.

B. Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child’s English Language skills.

C. Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
D. Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the student’s aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child’s impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

E. No single procedure is used as the sole criterion for determining an appropriate educational program for a student.

F. The student is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

G. The evaluation must be sufficiently comprehensive to identify all the child’s educational needs, whether or not, they link to the child’s disability category. [300.532(h)]

H. Uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

I. Uses evaluation tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student.

J. A variety of evaluation tools and strategies are used to gather relevant functional and developmental information about the student, including information provided by the parent, that may assist in determining:

1. whether the child is a student with a disability,
2. the content of the student’s IEP, including information related to enabling the child-
   a. to be involved in and progress in the general curriculum; or
   b. if a preschool child, to participate in appropriate activities.

K. The evaluation is made by a multidisciplinary group of persons, including at least one teacher or other specialist with knowledge of the area of suspected disability.

XI. EVALUATION REQUIREMENTS FOR SPECIFIC DISABILITY

The evaluation requirements for each disability may be found in Section 3 - Disability.

XII. DETERMINATION OF DISABILITY (34 CFR §300.534)

A. Upon completing the administration of tests and other evaluation materials -

1. a team of qualified professionals and the parent of the student must determine whether the student is a student with a disability as defined in federal law 34 CFR §300.7, and
2. provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.

B. The student may not be determined to be a student with a disability if the determinant factor for that determination is -
1. lack of instruction in reading or math;
2. limited English proficiency; or
3. does not otherwise meet the eligibility criteria

C. The student with a disability must be evaluated in accordance with CFR 34 300. 532 and 300. 533 before determining that the student is no longer a student with a disability.

XIII. PROCEDURES FOR DETERMINING DISABILITY AND PLACEMENT (34CFR §300.535)

A. In interpreting evaluation data for the purpose of determining if a student is a student with a disability, and the educational needs of the student, the LISD will -

1. draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and
2. ensure that information obtained from all of these sources is documented and carefully considered.

B. If a determination is made that a student has a disability and needs special education and related services, an IEP must be developed for the student.

XIV. SPECIAL PROVISIONS

A. Functional Behavioral Assessment

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

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

B. Homebound or Hospitalized Students

All students referred for consideration as homebound or hospital need evaluation information that describes the student’s functioning in the following areas: health, vision, hearing, social emotional status, general intelligence, academic performance, communication, and motor abilities so the ARD/IEP committee can determine eligibility for special education.
For homebound or hospitalized students who have no prior history of a disability or need for special education, the information collected at the time of referral, including the appropriate medical information, such as group administered achievement and cognitive ability scores, class data, and grades may be sufficient for the ARD/IEP committee to make a decision. The ARD/IEP committee may ask for additional information if necessary for its deliberations.

Eligibility must be established prior to initiating any special education services. The ARD/IEP committee may determine that referral information is sufficient and that no further evaluation is needed.

C. Speech Impairment (see also Eligibility Criteria Section)

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

D. Evaluation of Very Young or Severely Disabled Students

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

E. Visual Impairment (see also Eligibility Criteria Section)

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

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

F. Auditory Impairment (see also Eligibility Criteria Section)

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

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

G. Atlantoaxial Dislocation Condition

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

H. Attention Deficit Disorder

When conferencing with parent:
1. discuss educational needs with parent;  
2. discuss need for referral to special education - not for ADD or LD, etc.;  
3. discuss manner in which testing is conducted (time lines, outcomes).

After referral is made:
1. appropriate evaluation measures will be administered,  
2. Multidisciplinary Team (referring teacher, special education teacher and diagnostician) will meet to determine if student meets criteria as a student with a Learning Disability (LD). If the student qualifies as LD, academic and behavior needs will be addressed at the ARD/IEP meeting. If the student does not qualify as LD, but appears to have an educational need and data indicates a possibility of ADD, the team may recommend that the Other Health Impaired (OHI) eligibility be pursued.

If OHI pursued:
1. disability forms must be completed by a medical doctor  
2. the medical forms are for diagnosis only - we do not pursue medication;  
3. if the parent has a doctor who knows the child and would be willing (knowledgeable) to fill out forms, that avenue may be pursued.

Caution: Remember that many students will be diagnosed as ADD or ADHD but do not necessarily require special education services. Their needs may be addressed by the local campus Section 504 committee.

If you have any questions, please review with your LISD campus personnel or call the LISD special education office.

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

J. Vocational Evaluation

Special education will collect vocational evaluation data when appropriate. As the ARD/IEP committee begins discussion and planning for entry into the high school curriculum and discusses the graduation plan of the student, vocational evaluation may be determined appropriate. (For information on the Vocational Adjustment Program see Instructional Arrangements Section.)

1. The ARD/IEP committee may recommend vocational evaluation when:
   a. the student has no specific identified skills which are determined necessary for employment, or
   b. the student has no idea of vocational opportunities or careers of any interest.

2. Based on ARD/IEP committee recommendation, occupational preparation needs may be reviewed and may include the following:
   a. the Full and Individual Evaluation;
   b. the current IEP;
   c. information about past school performance;
   d. work training history; and
   e. interviews with student, parent, and teacher(s). The interviews include attitudes, work habits, behaviors, job readiness, work-related skills, and post-school expectations.

The assigned special education teacher will explain to parents the purpose of the vocational review. Results of the vocational evaluation may be discussed with the student prior to being filed in the student’s special education folder. The results will also be discussed at the annual ARD/IEP committee meeting.

3. If the review of the records in #2. above indicates, a vocational interest and aptitude evaluation may be recommended by the ARD/IEP committee.

The special education teacher and/or speech pathologist are responsible for sending the Notice and Consent for a Full and Individual Evaluation to the parent prior to the evaluation. Evaluation will begin no earlier than five school days after notification in accordance with LISD guidelines.

4. For students with disabilities whose initial vocational evaluation, does not yield measurable results or sufficient information for planning appropriate occupational preparation, additional vocational evaluation may be required such as: review of work samples, situational evaluations, and work behaviors analysis. Observation, training sites, or other instructional programs and settings may be used to provide part of this data.

5. Situational assessment of students placed in campus-based and community-based job-training options as a part of the student’s educational program will be conducted by special education instruction staff on an ongoing basis. Reports will be filed in the teacher’s student folder and reviewed at each annual ARD/IEP meeting.

6. FUNCTIONAL VOCATIONAL EVALUATION (34 CFR§300.29)
The ARD/IEP committee will consider any recommendations from the ITP (Individual Transition Plan) Committee for functional vocational evaluations. Transition services means a coordinated set of activities for a student with a disability that includes if appropriate a functional vocational evaluation. If the ARD/IEP committee recommends this as a result of the ITP meeting, a qualified professional will conduct the evaluation.

a. The evaluation will include but not be limited to: observation in vocational settings, interview with teacher and parents, and other evaluations as appropriate.
b. Results of the evaluation including strengths and weaknesses will result in a written report maintained in the eligibility file.

XV. **RE-EVALUATION** *(34 CFR §300.321 and §300.536)*

Prior to the three year anniversary date of an active special education student’s evaluation, a three year re-evaluation (review of existing data) will be planned by the ARD/IEP Committee to determine the scope of the evaluation. Re-evaluations must be done on or before the date (month/day/year) of the last comprehensive evaluation or more frequently if conditions warrant, or if the parent or teacher requests an evaluation.

A re-evaluation must be completed before determining that the student is no longer a student with a disability (unless dismissal is due to graduation with a regular high school diploma or exceeding age eligibility for a free appropriate public education). §300.534(c)

A re-evaluation packet will be initiated by the designated staff on each campus or information from the parent may be gathered at the pre-assessment ARD/IEP meeting when discussion of existing data occurs. The re-evaluation packet should be started giving ample time for the data to be collected, evaluation to be completed, and the evaluation report to be written.

**DETERMINATION OF NEEDED EVALUATION DATA** *(34 CFR §300.533)*

As part of an initial evaluation (if appropriate) and as part of any reevaluation, a team that includes individuals required as ARD/IEP committee members, and other qualified professionals, as appropriate, will -

A. **Review existing evaluation data** on the child, including but not limited to:

   1. evaluation and information provided by the parents of the student,
   2. current classroom based evaluations and observations, and
   3. observations by teachers and related services providers, and
   4. group evaluation such as TAKS, IOWA, etc., and
   5. other school records such as attendance, discipline reports, etc..

B. The ARD/IEP team, prior to the evaluation, will identify what additional data, if any, are needed to determine:

   1. whether the child has a particular category of disability, as described in federal law 34 CFR§300.7, or in case of a reevaluation of a student, whether the student continues to have a disability,
   2. the present levels of performance and educational needs of the student,
   3. whether the student needs special education and related services, or in the case of a reevaluation of a student, whether the student continues to need special education and related services; and
4. whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP of the student and to participate, as appropriate in the general curriculum.

C. LISD will administer tests and other evaluation materials as may be needed to produce the data identified in A. and B. above.

D. If determination under paragraph A. is that no additional data are needed to determine whether the student continues to be a student with a disability the LISD will notify the student’s parents:

1. of that determination and the reasons for it; and
2. of the right of the parents to request an evaluation to determine whether the student continues to be a student with a disability.

E. LISD is not required to conduct an evaluation described in paragraph D. 2. above unless requested to do so by the student’s parents.

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

Qualified Personnel (34 CFR §300.23)

The term “qualified” means that a person has met TEA approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which he or she is providing special education or related services.

Appraisal personnel will review referral data, determine suspected disability, and route the referral to the appropriate special evaluation staff. Professionals will be assigned to conduct evaluations only in the areas for which they have been trained. LISD appraisal personnel and their responsibilities include:

A. Speech Pathologist:

1. administers evaluations for all speech impaired referrals;
2. screens or evaluates referrals for oral expression and listening comprehension upon request of educational diagnostician;
3. screens referrals as appropriate upon request;
4. participates on the multidisciplinary team evaluations for autistic referrals when appropriate; and
5. may serve on the Student Assistance Team (SAT) or 504 Committee on assigned campus.

B. Educational Diagnostician:

1. administers intellectual and academic/developmental evaluations;
2. administers evaluations of learning competencies for initial evaluations and re-evaluations;
3. participates on multidisciplinary team evaluations for autistic, learning disabled, and multiple disabilities referrals;
4. assists in evaluation of vocational skills and needs;
5. may serve on the Student Assistance Team (SAT) or 504 Committee on assigned campus; and
6. interprets evaluation data orally and in a written report to the ARD/IEP committee.
C. Psychologist:
   1. administers psychological screenings and evaluations;
   2. participates on multidisciplinary team evaluations for autistic referrals;
   3. develops behavior intervention plans and consults with staff as needed;
   4. participates on ARD/IEP committee as needed; and
   5. may serve on Student Assistance Team (SAT) or 504 Committee on assigned campus, as appropriate.

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

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

F. Adapted P.E. teacher or Regional Education Service Center Consultant:
   1. administers screening/evaluation for possible adapted physical education services, and
   2. completes a written report with recommendations.

G. Services to Students with Auditory Impairments (AI)
   Evaluation and services for students with auditory impairments will be performed by appropriately qualified personnel. Personnel from the Regional Day School for the Deaf or other appropriate personnel may be used.

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

I. Special Education Teachers
   Annually assess student competencies for updating the student’s IEP. This may be an informal criterion/curriculum based evaluation such as the CLASS assessment, Brigance, etc. Information for the three year re-evaluation will be provided to the diagnostician and / or ARD/IEP committee for inclusion in the written eligibility report.
DISABILITY CRITERIA

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DISABILITY CRITERIA
(TAC §89.1040)

34 CFR §300.7a
The term student with a disability means a student evaluated as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or a multiple disability, and who because of that impairment needs special education and related services. If it is determined through an appropriate evaluation, that a child has one of the disabilities, but only needs a related service and not special education, the child is not a child with a disability.

TEC §29.003
The Texas Education Agency developed specific eligibility criteria based on the general classifications with reference to contemporary diagnostic or evaluative terminology and techniques. A student is eligible to participate in a school district’s special education program if the student:
A. is not more than 21 years of age and has a visual or auditory impairment that prevents the student from being adequately or safely educated in LISD without the provision of special services; or
B. is at least three but not more than 21 years of age and has one or more of the following disabilities that prevents the student from being adequately or safely educated in LISD without the provision of special services:
   physical disability, mental retardation, emotional disturbance, learning disability, autism, speech disability, or traumatic brain injury.

TAC §89.1035 Age Ranges for Student Eligibility
Services will be available to all eligible students ages 3-21. Services will be made available to eligible students on their third birthday. A free appropriate public education will be available from birth to students with visual or auditory impairments in accordance with the Texas Education Code. Graduation with a regular high school diploma pursuant to TAC §89.1070 terminates a student’s eligibility to receive services. An eligible student receiving special education services who is 21 years of age on September 1 of a school year shall be eligible for services through the end of that school year or until graduation with a regular high school diploma pursuant to TAC §89.1070, whichever comes first. (see also Graduation, ARD/IEP section)

TAC §89.1040
To be eligible to receive special education services, a student must be a “child with a disability” as defined in the federal law, the Texas Education Code and Rules. The following pages specify criteria to be used in determining whether a student’s condition meets one or more of the definitions in federal regulations or state law.

The determination of whether a student is eligible for special education and related services is made by the student’s ARD/IEP committee. Any evaluation or re-evaluation of a student shall be conducted in accordance with federal and state regulations. The evaluation will document the members of the multidisciplinary team. The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student’s eligibility must include, but is not limited to the following:
1. a licensed specialist in school psychology(LSSP), an educational diagnostician, or other appropriately certified or licensed practitioner with experience and training in the area of the disability, or
2. a licensed or certified professional for a specific eligibility category defined in the following disability categories that follow:
I. **AUTISM**

34 CFR §300.7

“Autism” means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a child’s educational performance. Other characteristics often associated with autism are:

- engagement in repetitive activities and stereotyped movements,
- resistance to environmental change or change in daily routines, and
- unusual responses to sensory experiences.

The term does not apply if a child’s educational performance is adversely affected primarily because the child has a serious emotional disturbance. A child who manifests the characteristics of “autism” after age 3 could be diagnosed as having “autism” if criteria above is satisfied. [300.7(2c)(ii)]

Students with pervasive developmental disorders are included under this category.

The written report of evaluation shall include specific recommendations for behavioral interventions and strategies.

II. **DEAF-BLINDNESS**

34 CFR §300.7

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

TAC §89.1040

The multidisciplinary team that collects or reviews evaluation data includes, but is not limited to, the individuals described as follows:

- An otologist or licensed medical doctor and an audiologist to determine the presence of a hearing impairment.
- An ophthalmologist or optometrist, a professional certified in the education of students with visual impairments or a certified orientation and mobility instruction to determine the presence of a visual impairment
- A speech/language therapist, a certified speech and language therapist, or a licensed speech language pathologist, if appropriate.

A student who is deaf-blind is one who based on documented evaluations:

1. meets the eligibility criteria for auditory impairment and visual impairment above,

2. meets the eligibility criteria specified on page 304 (Auditory Impairment) and page 313 (Visual Impairment). If the auditory impairment cannot be demonstrated conclusively, and if a speech/language therapist, certified speech and language therapist, or licensed speech language pathologist indicates there is no speech at an age when speech would normally be expected, or
3. has documented hearing and visual losses that, if considered individually, may not meet the requirements for auditory impairment or visual impairment, but the combination of such losses adversely affects the student’s educational performance creating a need for special education (i.e. specially designed instruction) and related services. The combination causes severe communications needs, other developmental needs and needs that cannot be accommodated in special education programs solely for children with deafness or children with blindness.; or

4. has a documented medical diagnosis of a progressive medical condition that will result in concomitant hearing and visual losses that without special education intervention, will adversely affect the student’s educational performance creating a need for special education (i.e. specially designed instruction) and related services.

III. AUDITORY IMPAIRMENT

34 CFR §300.7c.3. Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child’s educational performance creating a need for special education (i.e. specially designed instruction) and related services.

34 CFR §300.7c.5. Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child’s educational performance but that is not included under the definition of deafness in this section.

TAC §89.1040
A student with an auditory impairment is one who has been determined to have a serious hearing loss even after corrective medical treatment or use of amplification. The evaluation data reviewed by the multidisciplinary team in connection with the determination of a student’s eligibility based on an auditory impairment must include:

A. an otological examination performed by an otologist or a licensed medical doctor with documentation that an otologist is not reasonably available.

B. an audiological evaluation by a licensed audiologist shall also be conducted.

C. This evaluation will include a description of the implications of the hearing loss for the student’s hearing in a variety of circumstances with or without recommended amplification.

D. The team will ascertain the student’s language and communication needs, including oral (spoken) or aural (hearing) means, finger spelling, or sign language, opportunities for direct communication with peers and professional personnel in the child’s language and communication mode, academic level, and opportunities for direct instruction in the child’s language and communication mode.
IV. MENTAL RETARDATION

34 CFR §300.7
Mental retardation means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child’s educational performance creating a need for special education (i.e. specially designed instruction) and related services.

TAC §89.1040
A student who has mental retardation is one who is functioning two or more standard deviations below the mean on individually administered scales of verbal ability and either performance or nonverbal ability, and who concurrently exhibits deficits in adaptive behavior.

If the intelligence quotient(IQ) score is above 70, the student is functioning above the mental retardation range.

1. If the IQ score is 69 or 70, functioning level depends upon which intelligence test was administered. If the Stanford-Binet: Fourth Edition, the Slosson Intelligence Test, the McCarthy Scales of Children’s Abilities, or the Bayley Scales of Infant Development (tests with a standard deviation of 16) was used, the student is functioning above the mental retardation range.

2. If the Wechsler Intelligence Scale Tests or the Kaufman Assessment Battery for Children (tests with a standard deviation of 15) was used, the student is not functioning above the mental retardation range.

3. If the IQ score on any of the tests is 68 or below, the student is not functioning above the mental retardation range.

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

5. If a student is very young and/or has a severe disability or a severe sensory impairment, a developmental scale may be administered instead of intelligence tests. The student’s performance must be within the mental retardation range on the developmental scale.

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

7. An adaptive behavior scale must be administered and documented. Some examples of adaptive behavior scales include the Adaptive Behavior Inventory for Children, Vineland Adaptive Behavior Scales, and Scales of Independent Behavior.
V. MULTIPLE DISABILITIES

34 CFR §300.7
Multiple disability means concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc. the combination of which causes such severe educational problems that the problems cannot be accommodated in special education programs solely for one of the impairments. This does not include deaf-blindness.

TAC §89.1040
The multidisciplinary team that collects or reviews evaluation data must include the members of the team required to establish the two or more disabilities that are the basis for the multiple disabilities.

A student with multiple disabilities is one who has a combination of disabilities included in this section and who meets all of the following conditions:

A. The student’s disability is expected to continue indefinitely, and

B. The disabilities severely impair performance in two or more of the following areas:
   1. psychomotor skills,
   2. self-care skills,
   3. communication,
   4. social and emotional development, or
   5. cognition.

Students who have more than one of the disabilities but who do not meet the criteria for multiple disabilities shall not be classified or reported as having multiple disabilities.

VI. PHYSICAL DISABILITY

34 CFR §300.7.c.8.
Orthopedic Impairment

Orthopedic impairment means a severe orthopedic impairment that adversely affects a child’s educational performance creating a need for special education (i.e. specially designed instruction) and related services. The term includes impairments caused by congenital anomaly (e.g. clubfoot, absence of some member, etc.), impairments caused by disease (e.g. poliomyelitis, bone tuberculosis, etc., and impairments from other causes (e.g. cerebral palsy, amputations, and fractures or burns that cause contractures, etc.).

TAC §89.1040
The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student’s eligibility based on an orthopedic impairment must include a licensed physician.
34 CFR §300.7c.9.

Other Health Impairment

Other health impairment means having limited strength, vitality, or alertness including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems, such as:

asthma, attention deficit disorder, attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, rheumatic fever, nephritis, sickle cell anemia, hemophilia, lead poisoning, or leukemia, and adversely affects the student’s educational performance creating a need for special education (i.e. specially designed instruction) and related services.

TAC §89.1040
The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student’s eligibility based on other health impairment must include a licensed physician.

VII. EMOTIONAL DISTURBANCE

34 CFR §300.7

A. The student with an emotional disturbance is one who has been determined to meet criteria in federal regulations §300.7 and state law which follow. An emotional disturbance is 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:

1. an inability to learn that cannot be explained by intellectual, sensory, or health factors;
2. an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
3. inappropriate types of behavior or feelings under normal circumstances;
4. a general pervasive mood of unhappiness or depression; or
5. a tendency to develop physical symptoms or fears associated with personal or school problems.

B. The term includes schizophrenia. It does not apply to children who are socially maladjusted, unless it is determined that they have a serious emotional disturbance.

C. Determine that the behaviors are not the result of social maladjustment.

TAC §89.1040
The written report of full and individual evaluation from the evaluating professional should specify recommendations for behavioral supports and intervention.

22 TAC §465.38(1)(C)
The assessment of emotional or behavioral disturbance, for educational purposes, using psychological techniques and procedures is considered the practice of psychology.

TX Occupations Code 501.503
A person commits an offense if the person engages in the practice of psychology or represents that the person is a psychologist in violation of the Texas Occupations Code.

VIII. LEARNING DISABILITY

34 CFR §300.7c.10. Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction dyslexia, and developmental aphasia.

The term does not apply to children who have learning problems that are primarily the result of visual, hearing, or motor disabilities, or mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

TAC §89.1040

A student with a learning disability is one who has been determined by a multidisciplinary team (defined in this section) to meet the criteria defined in §300.7 above and in whom the team has determined whether a severe discrepancy between achievement and intellectual ability exists in accordance with federal and state criteria which is listed below.

Criteria for Determining the Existence of a Specific Learning Disability
(34 CFR §300.541)

A multidisciplinary team (defined in this section) may determine that a student has a specific learning disability if:

A. The student does not achieve commensurate with his or her age and ability levels in one or more of the areas listed below if provided with learning experiences appropriate for the child's age and ability levels: and

B. The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:
   1. oral expression,
   2. listening comprehension,
   3. written expression,
   4. basic reading skill,
   5. reading comprehension,
   6. mathematics calculation, and/or
   7. mathematics reasoning.

C. The team may not identify a student as having a learning disability if the severe discrepancy between ability and achievement is primarily the result of:
   1. a visual, hearing, or motor impairment;
   2. mental retardation;
   3. emotional disturbance;
   4. environmental, cultural or economic disadvantage. (follow the process in place to rule out the effects of these factors)

D. (TAC §89.1040)

A severe discrepancy exists when the student's assessed intellectual ability is above the mentally retarded range, but the student's assessed educational achievement in areas in
B. above is more than one standard deviation below the student’s intellectual ability. Consider the following:

1. The discrepancy between the student’s assessed intellectual ability and assessed educational achievement was computed either by comparing standardized test scores or reviewing other evaluation data. A severe discrepancy is determined by either: a comparison of standardized intelligence and achievement test scores (Method 1) or a review of other evaluation data (Method 2).

2. If the multidisciplinary team cannot establish the existence of a severe discrepancy because of the lack of appropriate evaluation instruments, or if the student does not meet the criteria, the team must document in its written report the areas identified and the basis for determining that the student has a severe discrepancy. The report will include a degree of the discrepancy between intellectual ability and achievement.

3. The discrepancy is computed as follows:
   - determine the full-scale IQ score;
   - determine the standard score for each achievement subtest;
   - determine whether both the IQ and achievement test have the same standard deviations; if the standard deviations are different, convert to a common metric using an appropriate statistical procedure (such a z scores);
   - subtract each achievement subtest standard score from the full-scale IQ score.
   If the difference is more than one standard deviation (more than 15 or 16 points depending on the tests used), the discrepancy is severe. There must be a severe discrepancy in one or more of the areas listed in the item.

4. If the intelligence quotient (IQ) score is above 70, the student is functioning above the mental retardation range.

5. If the IQ score is 69 or 70, functioning level depends upon which intelligence test was administered. If the Slosson Intelligence Test, the McCarthy Scales of Children’s Abilities, or the Bayley Scales of Infant Development (tests with a standard deviation of 16) was used, the student is functioning above the mental retardation range.

6. If the Wechsler Intelligence Scale Tests, Stanford-Binet or the Kaufman Assessment Battery for Children (tests with a standard deviation of 15) was used, the student is not functioning above the mental retardation range.

7. If the IQ score on any of the tests is 68 or below, the student is not functioning above the mental retardation range.

E. If non-standardized procedures are used to administer a standardized test or developmental scale because of a severe sensory impairment (e.g. a visual impairment), another severe physical disability, or because of language or communication differences, the adaptations should be noted and the implications for test interpretation should be documented. Normed scores are based on standardized administration procedures and should not be reported in non-standardized procedures are used to administer the test. In these situations, Method 2 must be used to determine the existence of a severe discrepancy.

F. Document the team’s determination of eligibility which must include a statement of:
   • whether the child has a specific learning disability and the basis for making the determination.
     - the adverse affects on educational performance creating a need for special education (i.e. specially designed instruction) and related services;
     - the educationally relevant medical findings, if any;
     - whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; and
     - the determination of the team concerning the effects of environment, cultural, or economic disadvantage.
Multidisciplinary Team Members (34 CFR §300.540) (taken from: CIA Section)
The determination of whether a student suspected of having a specific learning disability is a
student with a disability as defined in federal law, must be made by the student’s parents and a
team of qualified professionals which must include:

A. The child’s general education teacher; or
   * if the child does not have a general education teacher; a general classroom teacher
     qualified to teach a child of his or her age; or
   * for a child of less than school age, an individual certified by the State Board of Educator
     Certification (SBEC) to teach a child of his or her age; and

B. at least one person qualified to conduct individual diagnostic examinations of children such
   as a licensed specialist in school psychology, educational diagnostician or other
   appropriately certified or licensed practitioner with experience and training in the are of the
   disability, and

C. the parent. (Documentation of parent information from the referral, the evaluation report,
   and participation in the initial ARD/IEP committee meeting will demonstrate that the parent
   has been involved in the process.)

Each team member will certify in writing whether the report reflects his/her conclusions. If a
team member disagrees with the written report, he/she must submit a separate statement
presenting his/her conclusions.

Observation (34 CFR §300.542)
At least one team member other than the child’s general teacher shall observe the child’s
academic performance in the general classroom. Relevant behaviors are noted during the
observation according to their relationship to the student’s academic functioning.

If the child is not in school, a team member shall observe the child in an environment
appropriate for a child of that age.

Method 2 (TAC §89.1040 (c) 9(B))
If the multidisciplinary team cannot establish the existence of a severe discrepancy in
accordance with D. above because the student could not be assessed through standardized
procedures because of a lack of appropriate evaluation instruments, or that standardized test
procedures did not reflect the severity of the discrepancy between expected and actual
performance, the team must document in its written report. The written report must identify the
areas under B. on the previous page of severe discrepancy and the basis for determining that
the student has a severe discrepancy.

The report shall include a statement of the degree of the discrepancy between intellectual
ability and achievement.

Address the degree of discrepancy between intellectual ability and achievement demonstrated
by data obtained from each of the following sources:

1. standardized evaluation instruments
2. reports from parents
3. observation of classroom performance
4. student work samples
5. other items as needed.
IX. SPEECH IMPAIRMENT

34 CFR §300.7
Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance creating a need for special education (i.e. specially designed instruction) and related services.

TAC §89.1040
The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student’s eligibility based on a speech impairment must include a certified speech and hearing therapist, a certified speech and language therapist, or a licensed speech/language pathologist.

* Persons with a Texas speech-language pathology assistant license may not conduct the evaluation necessary to establish the underlying disability, which would support a determination of eligibility under the speech impairment eligibility category.

Refer to the LISD Speech and Language Therapy Guidelines for more specific information.

X. TRAUMATIC BRAIN INJURY

34 CFR §300.7
Traumatic Brain Injury means an acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects the student’s educational performance creating a need for special education (i.e. specially designed instruction) and related services.

The term does apply to open or closed head injuries resulting in impairments in one or more areas, such as: cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

TAC §89.1040
The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student’s eligibility based on a traumatic brain injury must include a licensed physician.

In addition an evaluation to determine educational need must be performed by LISD personnel qualified to assess those areas identified above that are suspected to adversely affect the student’s educational performance. Those personnel may include:

a licensed specialist in school psychology (LSSP), an educational diagnostician, or other appropriately certified or licensed practitioner with experience and training in the area of the disability.
XI. VISUAL IMPAIRMENT

34 CFR §300.7
Visual impairment including blindness means an impairment in vision that, even with correction, adversely affect a child’s educational performance creating a need for special education (i.e. specially designed instruction) and related services. The term includes both partial sight and blindness.

TAC §89.1040
A. The visual loss should be stated in exact measures of visual field and corrected visual acuity at distance and at close range in each eye in a report by a licensed ophthalmologist or optometrist. The report should also include prognosis whenever possible. If the doctor is unable to report a prognosis, then that inability should be so noted. In meeting criteria in §300.7, a student with a visual impairment is one who:
1. has been determined by a licensed ophthalmologist or optometrist to:
   a. have no vision or to have a serious visual loss after correction, or
   b. have a progressive medical condition that will result in no vision or a serious visual loss after correction.
   c. have visual loss stated in exact measures of visual field and corrected visual acuity at distance and near in each eye. If exact measure could not be obtained, an eye specialist must so state and give best estimates.
2. has been determined by the following evaluations to have a need for special services:
   a. functional vision evaluation by a professional certified in the education of students with visual impairments or a certified orientation and mobility instructor.
      * The evaluation must include the performance of tasks in a variety of environments requiring the use of both near and distance vision. Environments in which the student functions may include, the classroom, cafeteria, gym, hallway, school grounds, job site, and home – information from medical reports is not sufficient. There should be a variety of recommendations, including modifications to the environment, supplemental aids and equipment, adaptive technology, teaching strategies, physical education, vision related services, evaluation strategies, testing strategies, areas of needed instruction in compensatory skill areas, and reading and writing skills and needs.
      * recommendations concerning the need for a clinical low vision evaluation and an orientation and mobility evaluation, and
   b. a learning media assessment by a professional certified in the education of students with visual impairments which must include:
      * recommendations concerning which specific visual, tactual, and/or auditory learning media are appropriate for the student. (A LMA evaluates the variety of methods and materials the student uses to accomplish learning tasks.),
      * includes recommendations concerning appropriate reading and writing media (including student’s future needs for instruction in Braille or the use of Braille);
      * whether or not there is a need for ongoing evaluation in this area and if so, documentation that the evaluation occurred within a reasonable time frame.

B. A student who has a visual impairment is functionally blind if the student will use tactual media (which includes Braille) as a primary tool for learning to be able to communicate in both reading and writing at the same level of proficiency as other students of comparable ability. The report will document strengths and weaknesses in Braille skills. Pre-Braille and/or Braille readiness activities may be appropriate for: infants and preschoolers, students with multiple disabilities, students who are blind and in the primary grades, older students who are learning Braille due to trauma, deteriorating vision, and/or severely limited visual efficiency, students who will need instruction in Braille or use of Braille in the future.
XII. NONCATEGORICAL EARLY CHILDHOOD

34 CFR §300.7
The term child with a disability for children aged 3 through 5 include a child: who is experiencing developmental delays, as defined by our State and as measured by appropriate diagnostic instruments and procedures and who by reason thereof, needs special education and related services.

TAC §89.1040 Texas
A child ages three through five who is evaluated as having mental retardation, emotional disturbance, a specific learning disability, or autism may be described as noncategorical early childhood.

Document that the student is evaluated as having one of the following:
- autism, (attach written report)
- emotional disturbance, (attach written report)
- learning disability, (attach written report) or
- mental retardation. (attach written report)

In making a decision to identify a child as being eligible under the NCEC eligibility category, multidisciplinary teams and ARD/IEP committees could consider the following:
- the age of the child and/or
- the child’s functioning level and/or
- evaluation data.

Use of NCEC is a local decision. The use of NCEC will be determined by the LISD at the policy level prior to implementation in the evaluation and ARD/IEP committee process.
(ARD / IEP)
ADMISSION, REVIEW, AND DISMISSAL / INDIVIDUAL EDUCATION PROGRAM and RELATED SERVICES

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ADMISSION, REVIEW AND DISMISSAL (ARD) / INDIVIDUAL EDUCATION PROGRAM (IEP) COMMITTEE

I. REQUIRED ARD/IEP COMMITTEE MEETINGS (34 CFR §300.343 and TEC §29.005)

(clarification: The IDEA federal regulations refer only to IEP meetings, however, Texas refers to ARD/IEP meetings. These terms are used interchangeably in our Operating Guidelines.)

Before a student is enrolled in LISD’s special education program, a committee composed of required persons listed in this section will develop the student’s individualized education program.

Admission, Review and Dismissal / Individual Education Program (ARD/IEP) committee meetings are required in the following instances:

A. Initial determination of eligibility: student has a disability and has an educational need, development of goals and objectives, and placement based on the IEP in the least restrictive environment;
B. Review of the student’s Individualized Education Program (IEP) not less than annually, to determine whether the annual goals for the student are being achieved; and
C. Review of the IEP as appropriate to address:
   1. any lack of expected progress toward the annual goals and in the general curriculum, if appropriate;
   2. the results of any reevaluation conducted;
   3. information about the student provided to, or by, the parents as described in the review of existing evaluation data;
   4. the student’s anticipated needs; or
   5. other matters as appropriate.

II. TIME LINE (TEC §29.004)

A written report of a full and individual evaluation of a student for purposes of special education services will be completed not later than the 60th calendar day following the date on which the LISD receives written consent for the evaluation signed by the student’s parent or legal guardian. (HB1339-summer 2003) The evaluation will be conducted using procedures that are appropriate for the student’s most proficient method of communication.

The ARD/IEP committee will make its decision regarding students referred for a full and individual evaluation within 30 calendar days from the date of the completion of the written evaluation report. When the thirtieth (30th) day occurs during the summer when school is not in session, the ARD/IEP committee will have until the first day of classes in the fall to finalize decisions concerning the initial eligibility determination, the IEP, and placement, unless the full and individual evaluation indicates the student will need extended school year services during the summer.
III. ARD/IEP COMMITTEE REPORT (TAC §89.1050)

A. The LISD will establish an Admission, Review, Dismissal / Individual Education Program (ARD/IEP) committee. The ARD/IEP committee will follow all federal and state requirements including the:

1. review of evaluation(s), re-evaluations and determination of eligibility,
2. development of the IEP,
3. consideration of the need for assistive technology devices and services,
4. development of behavior supports and intervention plans, if necessary,
5. determination of the least restrictive placement of a student referred for consideration for special education services, and
6. consideration of other areas such as: TAKS, SDAA-II, ESY, students with disabilities appropriate placement in AEP, extracurricular activities, etc.

B. The written report will document any evaluations reviewed by the ARD/IEP committee, including related service reports, home language survey, LPAC reports, FIE reports and Independent Education Evaluations (IEE). For students with limited English proficiency, LISD will consider the language needs as such needs relate to the student’s IEP.

1. As a part of an initial evaluation (if appropriate) and as part of any reevaluation, the ARD/IEP committee has reviewed existing evaluation data on the student, including evaluations and information provided by the parents of the student, current classroom-based assessments and observations, and observations by teachers and related services providers.

2. In interpreting evaluation data for the purpose of determining if a child is a child with a disability, and the education needs of the child, the LISD will:
   a. draw upon information from a variety of sources including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background and adaptive behavior, and
   b. ensure that information obtained from all of these sources is documented and carefully considered.

3. The members of the ARD/IEP committee must document their review of existing evaluation data and must summarize the basis of their decisions about whether additional data are needed to determine the following:
   a. whether the child has a particular category of disability, as described in federal law 34 CFR§300.7, or in case of a reevaluation of a student, whether the student continues to have a disability,
   b. the present levels of performance and educational needs of the student,
   c. whether the student needs special education and related services, or in the case of a reevaluation of a student, whether the student continues to need special education and related services; and
   d. whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP of the student and to participate, as appropriate in the general curriculum.

C. For a child from birth through two years of age with visual and / or auditory impairments, an Individualized Family Services Plan (IFSP) meeting must be held in place of an ARD/IEP committee meeting in accordance with federal law and the MOU with TEA and Texas Interagency Council on Early Childhood Intervention. For students three years of age and older, LISD will develop an IEP.

D. In the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines after an evaluation of the student’s reading
and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student’s future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the student.

E. Consider the communication needs of the student and in the case of a student who is deaf, or hard of hearing, consider the student’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 communication mode.

F. The written report of the ARD/IEP committee will document the decisions of the committee with respect to issues discussed at the meeting. The written report will include the:
1. date;
2. names and positions;
3. signatures of the members participating in each meeting; and
4. indicate each member’s agreement or disagreement with the committee’s decision.

G. Parental Rights Regarding Adult Students. 34 CFR §§300.347(c), 300.315(a)(2-3); 300.517, TAC §89.1049, TEC §29.017

1. Beginning at least one year before a student reaches 18 years of age, the student’s individualized education program (IEP) will include a statement that the student has been informed that, unless the student’s parent or other individual has been granted guardianship of the student under the Probate Code, Chapter XIII, Guardianship, all rights granted to the parent under the Individuals with Disabilities Education Act (IDEA), Part B, other than the right to receive any notice required under IDEA, Part B, will transfer to the student upon reaching age 18. After the student reaches the age of 18, except as provided by subsection (b) of this section, the LISD will provide any notice required under IDEA to both the adult student and the parent.

2. All rights accorded to a parent under IDEA Part B including the right to receive any notice required by IDEA will transfer to an 18-year-old student who is incarcerated in an adult or juvenile, state or local correctional institution, unless the student’s parent or other individual has been granted guardianship of the student under the Probate Code, Chapter XIII, Guardianship.

3. The LISD will notify in writing the adult student and parent of the transfer of parental rights, as described in subsections (a) and (b) of this section, at the time the student reaches the age of 18. This notification is separate and distinct from the requirement that the student’s IEP include a statement relating to the transfer of parental rights beginning at least one year before the student reaches the age of 18. This notification is not required to contain the elements of notice referenced in 34 CFR §300.503, but will include a statement that parental rights have transferred to the adult student and provide contact information for the parties to use in obtaining additional information.

4. A notice under IDEA, Part B, that is required to be given to an adult student and parent does not create a right for the parent to consent to or participate in the proposal or refusal to which the notice relates. For example, a notice of an admission, review, and dismissal (ARD) committee meeting does not constitute invitation to, or create a right for, the parent to attend the meeting. However, in accordance with 34 CFR §300.344(a)(6), the adult student or the LISD may invite individuals who have knowledge or special expertise regarding the student, including the parent.

5. Nothing in this section prohibits a valid power of attorney from being executed by an individual who holds rights under IDEA, Part B.
H. The LISD will obtain written consent before initial placement occurs.

I. Provide a written or audio taped copy of the student’s IEP translated into Spanish if Spanish is the parent’s native language. If the parent’s native language is other than Spanish, a good faith effort will be made to provide the parents with a written or audio taped copy of the student’s IEP translated into the native language. (TEC §29.005 - summer 1999)

J. All disciplinary actions regarding students with disabilities will be determined in accordance with federal and state laws. For more information see the Discipline section of this document.

IV. PARENT PARTICIPATION IN A.R.D. COMMITTEE MEETINGS (34CFR §300.345, §300.501)

Determination of a Parent. The LISD will document the identification of the parent. The parent may be:
- a natural or adoptive parent of a child;
- a guardian but not the State if the child is a ward of the State; or
- a person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child’s welfare); or
- a foster parent who qualifies as a parent; or
- a surrogate parent. (for assignment of a surrogate parent, see Procedural Safeguards section 7 of this document)

LISD will encourage parent participation and will provide written notice to the parents regarding ARD/IEP Committee meetings. All requirements for the written notice are followed and the specific information for written notice is located in Section 7 of this document.

A. The LISD will maintain documentation to indicate the extent of parent participation in the individual educational plan development parent agreement or disagreement with admission, review, and dismissal committee action.

B. The parent will be given a copy of the IEP at no charge. (34 CFR§300.345 f)

C. If a parent is identified but is unavailable or refuses to participate in an ARD/IEP committee meeting, the LISD local campus:
   1. will conduct the ARD/IEP meeting without a parent in attendance if the campus has provided Notice of ARD and the parent has declined to attend, or the campus staff is unable to convince the parents that the parent should attend. In this case, the campus must have a record of its attempts to arrange a mutually agreed upon time and place, including, for example:
      a. detailed records of telephone calls made or attempted and the results of those calls with documentation on the LISD copy of Notice of ARD form or attached;
      b. copies of correspondence sent to the parents and any responses received;
      c. detailed records of visits made to the parents’ home or place of employment and the results of those visits; or
      d. conference telephone calls to ensure parent participation.
   2. may proceed with its responsibilities for planning and educating a student with disabilities after it has exhausted all avenues to include the parents in the ARD/IEP process, or
   3. must document its efforts to contact or include the parent on the Notice of ARD form and in the ARD/IEP minutes.
   4. LISD will take whatever action is necessary to ensure that the parents understand, and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for an interpreter for parents with deafness, or whose native language is other than English.
D. If a change in placement is made without parent participation in the ARD/IEP meeting, a copy of the ARD/IEP meeting should be sent to the parent. The change may not occur for five (5) school days unless the parent agrees to an earlier date. All other documentation will be maintained in the student’s permanent record.

E. If a parent refuses or otherwise does not give consent for the initiation of formal evaluation procedures or for initial special education program placement, the LISD school will:
   1. Ensure with all reasonable effort that the parent understands the proceedings and understands the rights of the parent.
   2. Attempt to come to agreement with parents. If these attempts fail, LISD may pursue mediation or may pursue legal action as authorized by the Texas Education Code, the Texas Family Code, or applicable federal statutes and regulations. (Note: students with disabilities are subject to the provision of compulsory student attendance in Texas Education Code 21.032 and 21.033). Initial evaluation and initial placement in special education will not occur without parental consent.

F. (TAC §89.1045) A parent may request a conference or an ARD/IEP committee meeting at any mutually agreeable time to address specific concerns about the student’s special education program.
   1. The school must respond to the parent’s request by:
      a. holding the requested meeting, or
      b. requesting assistance through the Texas Education Agency’s mediation process.
   2. LISD local campus staff should inform the parents of the functions of the ARD/IEP committee and the circumstances or types of problems for which requesting an ARD/IEP committee meeting would be appropriate.

G. Beginning at least one year before a student reaches 18 years of age, the student’s IEP must include a statement that the student has been informed of his or her rights under IDEA, Part B, that will be shared with his or her parents. (TAC §89.1049) (34CFR 300.517)

REMINDER: It is extremely important that all ARD/IEP committee deliberations be read before committee members sign the IEP.

V. A.R.D./I.E.P. COMMITTEE MEMBERSHIP (34 CFR §300.344)

Persons other than those listed below may be present at, and participate in, ARD/IEP committee meetings at the discretion of the principal, or the parent; however, the committee will include, under the circumstances described, only the following members in determining its actions:

A. One or both of the student’s parents;

B. At least one general education teacher of the student (if the student is, or may be, participating in the general education environment);

C. The special education teacher or the special education provider that participates in the ARD/IEP meeting must be certified in the student’s suspected area of disability. When a specific certification is not required to service certain disabilities categories, then the special education teacher or special education provider must be qualified to provide the educational services the child may need. Refer to Section 800 of this document for more information on qualifications of Special Education, Related Service, and Paraprofessional personnel to
ensure that appropriate teachers and or service providers are present and participate at each ARD/IEP committee meeting.

D. A representative of the district, who:
   1. is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities;
   2. is knowledgeable about the general curriculum; and
   3. is knowledgeable about the availability of resources of the district.
   * The district may designate another staff member to serve as the representative, if the criteria 1-3 are satisfied (provided other district ARD/IEP members meet the other participant requirements). The superintendent will approve the list of qualified ARD/IEP representatives of the district.

E. Individuals who can interpret the instructional implications of evaluation results, who may be a member of the team described in this section. Individuals may include:
   1. speech/language pathologist, for speech-only referrals;
   2. educational diagnostician; and/or
   3. licensed specialist in school psychology/psychologist.

F. At the discretion of the parent or LISD, other individuals who have knowledge or special expertise regarding the student, including related service personnel as appropriate, and

G. if appropriate, the student.

**Additional ARD/IEP Members Required:**

Students with disabilities who require additional professionals to be in attendance at ARD/IEP meetings are:

1. Visual Impairment - A professional certified in the education of students with visual impairments must be included. For students from birth through age two with visual impairments or students who are deaf-blind, the teacher of infants who are visually impaired or the teacher of students who are deaf-blind, as appropriate, may be one of the members of the ARD/IEP committee in place of the teacher of students with visual impairments.
2. Auditory Impairment - A professional certified in the education of the deaf must be included.
3. Vocational Education - Any student with a disability being considered for initial or continued placement in vocational education requires a representative from career and technology.
4. Limited English Proficiency - A professional representing the Language Proficiency Assessment Committee (LPAC) must be included when a student with limited English proficiency is considered.
5. Homebound - The homebound teacher must be included.
6. Off home campus students - A representative from the sending campus will attend initial, annual and re-evaluation ARD/IEP meetings. If there is a possibility that the student will be returning to the home campus the ARD/IEP meeting will be held at the home campus. The campus returning the student will send the teacher to the ARD/IEP meeting.

**VI. SCHEDULING THE ARD/IEP COMMITTEE MEETING**

A. The building principal should designate a staff member responsible for scheduling ARD/IEP meetings. Confirmation notices should be distributed to all special and general education instructional and support staff involved in the meetings. ARD/IEP scheduling should be coordinated to ensure participation and accuracy.

B. A schedule should be developed at the beginning of each year. Admission, Review, and Dismissal (ARD/IEP) Individual Education Program committee meetings may be moved up to
accommodate distribution, but in no case may they be held more than a year from previous annual ARD/IEP meetings. **One year means “calendar” year (month/day/year).**

C. If an ARD/IEP meeting is necessary for reasons other than the annual ARD, (discipline, failure, parent request, addition of a related service, etc.) and it is within a month or two of the annual ARD/IEP meeting, consider moving the annual date up and discussing all foreseeable decisions / needs in one meeting.

D. The times for meetings should be scheduled with regard to student need and ARD/IEP committee responsibilities. Meetings should not be scheduled so tightly that an unexpected situation cannot be handled properly.

**Annual Review** (see also IEP review section)

The annual review should occur within twelve months, on or before the anniversary date which reflects the original special education entry date or previous annual review date. **One year means “calendar” year (month/day/year).** When a student is enrolled in related services in addition to other special education instructional programs, only one annual ARD/IEP committee meeting should be held. Coordination among service providers is important to arrange for one annual ARD. The annual ARD/IEP committee date should be determined by entry into the instructional program. When the review is prior to the proposed date, the original review date may be revised as long as the period between reviews does not exceed one year.

At the annual review, the committee will:
A. review any informal evaluation from teachers or any formal evaluation if conducted;
B. review current IEP progress and develop a new IEP;
C. consider appropriateness of the student’s placement as it relates to the student’s IEP. The current IEP objectives will be reviewed and documented on the IEP prior to the development and acceptance of a new IEP. There should be some objectives that have been added/deleted/revised on the new IEP. If there are no changes, the ARD/IEP committee should have written justification for the lack of revision and a new IEP generated; and
D. consider any other items deemed important by the parent.

**Reevaluation (Three Year Review)**

At least once every three years, on or before the anniversary date of the student’s Full and Individual Evaluation date, the Admission, Review and Dismissal Committee will review existing evaluation data and plan the need for new individual evaluation information, if appropriate.

**VII. ARD/IEP COMMITTEE DECISIONS**

A. **Placements** (34CFR §300.552 and §300.553)

In determining the appropriate educational placement of a student with a disability, LISD ensures that:

1. The placement decision:
   a. is made by a group of persons, including the parents, and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and
   b. is made in conformity with the Least Restrictive Environment (LRE) provisions found in this section.

2. The student’s placement:
   a. is determined at least annually;
   b. is based on the student’s IEP; and
   c. is as close as possible to the student’s home.
3. Unless the IEP documents why some other arrangement is needed, the student is educated in the school that he or she would attend if nondisabled; and

4. In selecting the LRE, consideration is given to any potential harmful effect on the student or on the quality of services that he or she needs. The following will be considered, but not limited to: increased student frustration/stress, decreased students self-esteem /worth, increased difficulty with distractions /disruptions of regular environment, increased difficulty controlling behavior, increased safety concerns caused by physical aspects, increased difficulty completing tasks, wide difference in developmental levels causes isolation, other considerations specific to the individual.

5. A student with a disability is not removed from education in an age appropriate general education classroom solely because of needed accommodations in the general curriculum.

B. Least Restrictive Environment (34CFR §300.550 - .554 and §89.1050b)

The LISD will assure that students with disabilities, including students in public or private institutions or other care facilities, are educated with nondisabled students to the maximum extent appropriate to meet the student’s individual education program and overall educational needs. In providing programs, services, and activities for students with disabilities, LISD will first consider the least restrictive environment of the general education program.

Special classes, separate schooling or other removal of students with disabilities from the general education environment occurs only when the nature and severity of the disability is such that education in general classes, (including art, music, and PE) with the use of supplementary aids and services, cannot be achieved satisfactorily.

Supplementary aids and services may include but not be limited to: team teaching, content mastery, paraprofessional in the general classroom (less than 50% special education instruction), assistive technology devices, and others as determined by the ARD.

The ARD/IEP committee assures:

1. removal will be based on a review of the student’s educational status which may include but not be limited to information from district staff, parents, evaluation data, grades /achievement data, psychological data, medical data, related services data, or other pertinent information.

2. there is a continuum of services and placements available to meet the needs of students with disabilities for special education and related services and alternative placements were tried or considered such as: Chapter 1/compensatory, school health services, bilingual classes, ESL, tutorials, TAKS remediation, Pre-K program, adaptive equipment, or other provisions as determined by the ARD/IEP committee.

3. the student is provided the opportunity to participate in nonacademic and extracurricular activities on the same basis with nondisabled students to the maximum extent appropriate to the needs of that student. If the student is not able to participate, the ARD/IEP committee will specify activities considered and state why the student is excluded based on his/her individual needs and abilities. Nonacademic activities include, but are not limited to, lunch, recess periods, transportation, recreation activities, and assemblies. Extracurricular activities include, but are not limited to, athletics, band, choral groups, and clubs.

4. in selecting the LRE, consideration is given to any potential harmful effect on the student with disabilities if the student is removed from the general education class or any potential harmful effect on the quality of services that is needed. (potential harmful effects discussed must be listed)
5. in annually determining programs, services, and activities for students with disabilities, LISD will first consider the general education curriculum, be based on the student’s IEP, and use those resources made available to all students. The ARD /IEP committee assures the students receiving special education services will:
   a. remain in the general education program with special education support services, supplementary aids, or other special arrangements, if needed;
   b. be educated to the maximum extent appropriate with students who are not receiving special education services;
   c. be placed in a program as close as possible to the student’s home (list/describe services student needs that cannot reasonably be provided on the home campus);
   d. be provided opportunities to participate in school activities on the same basis as students who are not receiving special education services;
   e. be offered an opportunity for interaction on a regular basis with students who are not receiving special education services; and
   f. not be removed from education in age appropriate general education classrooms solely because of needed accommodations in the general education curriculum.
   g. specify the appropriate length of day – students with disabilities will have available an instructional day commensurate with that of students without disabilities
6. provide FAPE in the LRE to preschool aged children (even if free preschool programs to all preschool-aged children is not offered) see OSEP Policy Memorandum 89-23 for alternative methods

L.R.E. Questions the A.R.D. Committee may Discuss:

Based on Daniel R.R. v. State Board of Education, 874 F.2d 1036(5th Cir. 1989), the following are points for discussion and documentation as an ARD/IEP committee determines the appropriateness of the Least Restrictive Environment for a student with disabilities.

1. Can education in the general classroom, with the use of supplementary aids and services, be achieved satisfactorily for the student?
   a. Has the LISD taken steps to accommodate the student with disabilities in the general classroom? Describe previous efforts:
      (1) Did the district provide supplementary aids and services?
      (2) Did the district provide accommodations?
   b. Are the services provided sufficient? If the efforts failed, describe why:
      (1) the district does not have to provide every conceivable supplementary aid or service.
      (2) IDEA (Individuals with Disabilities Education Act) does not require general education teachers to devote all or most of their time to one student with a disability.
      (3) IDEA does not require that general education teachers modify the general education program beyond recognition.
      (4) General education teachers are not required to modify the general education curriculum to the extent that the student with disabilities is not required to learn any of the skills normally taught in general education.
   c. Will the student receive an educational benefit from general education?
      (1) Can the student grasp the TEKS curriculum elements of the general education curriculum?
      (2) Consider and document the nature and severity of the student’s disability in relation to receiving educational benefit from general education.
   d. Examine the student’s overall educational experience in the mainstreamed environment balancing the benefits of general and special education for each individual student. What needs can be met in general education and what needs cannot be met in general education?
e. What effect does the presence of the student with disabilities' have on the general classroom environment and thus on the education that the other students are receiving.
   (1.) Discuss and document any disruptions in the classroom.
   (2.) Does the student require so much of the teacher's attention that the teacher will have to ignore the other students' needs in order to attend to the student with disabilities.

2. If education in a general classroom cannot be achieved satisfactorily, determine whether the student has been mainstreamed to the maximum extent appropriate for that student.
   a. Determine if all academic and non-academic classes in general education with nondisabled peers has been considered or tried.
   b. Determine if mainstreaming for lunch, recess, or other times has been considered.

C. STATE/DISTRICT WIDE ASSESSMENTS (34CFR §300.138 & §39.023)

TAKS, SDAA-II, RPTE and TPRI

The decision to test or exempt students with disabilities from state or district wide assessments should be made by the ARD/IEP committee. This decision should be based upon whether or not the student has received instruction in content areas covered in the test. The decision should not be based upon the fact that the student may score lower than other students in the class. The eligibility of each student with a disability to take all or a portion of the TAKS basic skills assessment instrument and/or the exit level assessment instrument will be addressed in the student’s IEP. The ARD/IEP committee will determine appropriate assessment on an individual basis. Assessments may include TAKS, State-Developed Alternative Assessment (SDAA - II), Reading Proficiency Tests in English (RPTE) the Texas Primary Reading Inventory (TPRI), or other locally assigned alternate assessment. The ARD/IEP committee must review annually the previous ARD/IEP recommendations to determine if the student took the appropriate assessment and discuss progress.

1. TAKE TAKS (WITHOUT ACCOMMODATIONS):
   If a student with disabilities received instruction in content areas covered in the test and records indicate the student has the ability to master the test competencies, the ARD/IEP Committee should recommend the student take TAKS.

   TAKE TAKS (WITH ACCOMMODATIONS):
   *The TAKS will remain the graduation requirement for students who were enrolled in grade 9 or higher on January 1, 2001.*
   If a student with disabilities received instruction in content areas covered in the test, and school records indicate the student’s ability to master competencies covered in the test but has consistently required accommodations of general classroom procedures, the student may receive accommodations on the test. Decisions to use a particular accommodation will be made on an individual basis by the ARD/IEP committee and will take into consideration the needs of the student and whether the student routinely receives the accommodation in classroom instruction. The TAKS accommodations required will be listed in the ARD/IEP committee report. Allowable accommodations are found in the TAKS Coordinator’s Manuals provided by the TEA. The accommodations listed in the manual will be followed as required by TEA and determined by the ARD/IEP committee for each individual student. The Coordinator’s Manual also lists accommodations which are non-allowable.

EXEMPT FROM EXIT LEVEL ASSESSMENT:
Students may also be exempted from the Exit Level assessment if, even with allowable modifications, the assessment would not provide an appropriate measure of the student’s achievement. The ARD committee will determine how the student will be assessed.

2. TAKE STATE-DEVELOPED ALTERNATIVE ASSESSMENT (SDAA-II):
Based on ARD Committee decisions, this assessment option is available to students who:

- receive special education support and services,
- are enrolled in Grades 3 – 10,
- are receiving instruction in the Texas Essential Knowledge and Skills (TEKS), state-mandated curriculum.

A student should take the SDAA-II if he or she receives TEKS instruction on grade level with accommodations that would invalidate TAKS, or receives TEKS instruction below grade level with no accommodations that would invalidate the SDAA-II. The ARD/IEP committee will determine:

* accommodations for the SDAA-II that are routinely used in instruction based on the student’s disability. These accommodations must be documented in the IEP.
* determine level of performance considered to be satisfactory

Non-allowable accommodations are listed in the Coordinator Manual and include:

- the test administrator may not provide any direct or indirect assistance or reinforcement that identifies or aids in the identification of the correct response to an item.
- test questions, answer choices, and the writing prompt may not be rephrased or clarified,
- the number of answer choices for an item may not be reduced.

A student may take TAKS for one subject and the SDAA-II for another subject, depending on the ARD/IEP committee decision. For a student taking any SDAA-II the ARD/IEP committee will specify:

a. why the TAKS assessment is not appropriate even with allowable accommodations,
b. must list the SDAA-II (by subject area) to be used for the student,
c. determine level of performance considered to be satisfactory and any allowable accommodations currently specified in the IEP that will not invalidate the test,
d. the results must be documented and placed in the student eligibility folder for review at the next annual ARD/IEP committee meeting.

3. TAKE LOCALLY DEVELOPED ALTERNATE ASSESSMENT (LDAA):
A student should take a locally assigned alternate assessment if the student is not receiving TEKS instruction at any grade level or is receiving TEKS instruction but with accommodations that would invalidate the SDAA-II.

The ARD/IEP committee will specify:

a. why the TAKS or SDAA-II is not appropriate for the student, (ex. Because the student's IEP does not include instruction in TEKS at any grade level) (EXIT LEVEL ONLY: the assessment instrument, even with allowable modifications would not provide an appropriate measure of the students achievement)
b. must list the alternate assessment to be used for the student,
c. list the current functioning level which is to be assessed, and
d. the results of the alternate assessment must be documented on appropriate forms and placed in the student eligibility folder for review by the ARD/IEP committee at the annual review.

4. INTENSE PROGRAM OF INSTRUCTION  TEC §28.2013
The LISD ensures that students with disabilities who are eligible to take the state assessments but have not performed successfully receive an intensive program of instruction to enable the students to perform at grade level at the conclusion of the next regular school term or to attain a standard of annual growth. The intensive programs for students with disabilities will be designed by the student’s ARD/IEP committee to:
a. enable the student to attain a standard of annual growth on the basis of the student’s IEP; and if applicable
b. carry out the purposes of TEC §28.0211 (Satisfactory Performance on Assessment Instruments Required; Accelerated Instruction found below) by determining:
   (1) the manner in which the student will participate in an accelerated instruction program, and
   (2) whether the student will be promoted or retained as defined in TEC §28.0211 below.

5. SATISFACTORY PERFORMANCE ON ASSESSMENT INSTRUMENTS REQUIRED; Accelerated Instruction

   TEC §28.2011

   The Texas Legislature passed specific requirements for grade advancement and follows requirements of the Texas Student Success Initiative (SSI). The admission, review, and dismissal (ARD) committee makes all assessment decisions for students served by special education. The grade advancement requirements differ depending on the assessment in which the student participates.

   a. A student may not be promoted (except as provided by Subsection (b) or (e) of TEC §28.0211 which describes the opportunities to retake the assessment):
      (1) to the 4th grade program to which the student would otherwise be assigned if the student does not perform satisfactorily on the 3rd grade reading assessment under 39.023;
      (2) to the 6th grade program to which the student would otherwise be assigned if the student does not perform satisfactorily on the 5th grade mathematics and reading assessment under 39.023; or
      (3) to the 9th grade program to which the student would otherwise be assigned if the student does not perform satisfactorily on the 8th grade mathematics and reading assessment under 39.023.

   b. The admission, review, and dismissal (ARD) committee of a student who participates in a district’s special education program and who does not perform satisfactorily on an assessment instrument specified above in a. (1-3) and administered under Section 39.023 (a) or (b) will determine:
      (1) the manner in which the student will participate in an accelerated instruction program, and
      (2) whether the student will be promoted or retained under this section.

D. Assistive Technology Devices and Services (34CFR §300.5, 300.6, 300.308)

   Assistive technology devices or services are considered for all students with disabilities regardless of type or severity of disability. Assistive technology devices or services will be made available to students with disabilities if required as a part of the student’s special education, related service, or supplemental aids and services as determined by the ARD/IEP committee. Assistive technology devices and services are used to adapt conditions to improve the student’s functioning when needed to implement the student’s IEP.

   1. The ARD/IEP committee:
      a. will review present levels of performance, the goals and objectives, and recommendations for assistive technology devices and services from the full and individual evaluation report (FIE) and include in the IEP devices and services determined to be educationally necessary in order for the student to access the curriculum and make satisfactory academic progress, and
      b. will discuss assistive technology needs and consideration will be given to the competencies, strengths and weaknesses, and recommendations from the evaluation report,
      b. will determine whether the student needs a service that directly assists a student with a disability in the selection acquisition, or use of an assistive technology device; and
c. may recommend additional evaluation by the technology assistance team. The team may include any of the following professionals: Occupational Therapist, Physical Therapist, Speech Pathologist, Diagnostician, Vision Teacher, others as needed. The team member(s) will make written recommendations in an evaluation report for assistive technology services or devices including specific accommodations which are needed to implement the student’s individual education program.(see also FIE Section); and

d. will then consider the recommendations and if the committee determines that a student needs a particular device or service in order to receive FAPE, a statement to that effect will be in the IEP.

2. Recommendations for assistive technology for all students from the ARD/IEP Committee meetings will be logged and tracked by the campus designee to assure follow up occurs in ordering of material, any training required, etc.

3. Assistive technology devices and services assigned in the IEP do not replace necessary medical treatment or individually fitted or prescribed prosthetic or corrective devices such as hearing aids and glasses.

E. Extra-curricular Activities:
A student will be suspended from participation in any extra-curricular activity sponsored or sanctioned by the district as per general education guidelines unless otherwise determined by ARD/IEP Committee.

Suspension of a student with disabilities from extra-curricular activities, whose disability significantly interferes with the student’s ability to meet regular academic standards, will be based on the determination of whether a disability significantly interferes with a student’s ability to meet general academic standards will be made by the student’s ARD/IEP committee.

F. Grading and Reporting of Special Education Students
Each student receiving special education instruction has an individual education program (IEP) which addresses the student’s educational needs, educational goals and objectives.

1. The special education teacher will utilize a lesson plan which reflects the short term objectives as stated on the IEP. Grades should evolve from the objectives with supporting documentation of how the grade was determined.

2. Numerical grades will be recorded for each subject area in a grade book. Recommended minimum mastery level on an IEP objective should be 70%, as a grade of 70 is required for passing. If 70% is too high for mastery, the appropriateness of the objective should be reconsidered.

3. Care should be taken to ensure that objectives are written at a level which continues to challenge the student’s abilities. This may necessitate adjustments in curriculum, methods, pacing, materials, criteria, etc.

4. If the student with disabilities fails to meet the expectations addressed in the IEP, the responsible teacher will review the IEP for appropriateness of objectives, instructional levels, materials, and methods. The teacher must document on the IEP the efforts made to try to help the student achieve success.

5. If a student with disabilities should fail any subject (special education, vocational education, general education, etc.), the ARD/IEP committee may convene to discuss the student’s needs and make recommendations to help the student achieve success.

6. An ARD/IEP committee will meet if the student is not attending school to discuss the appropriateness of the IEP, need for additional testing, and pursuit of compulsory attendance, if appropriate.

7. The grading of a special education student in a general education classroom is based upon the ARD/IEP committee recommendations for, if any, accommodations of TEKS and other accommodations of pacing, methods, and materials needed. When
accommodations have been recommended by the ARD/IEP committee, the special education teacher is responsible for:

a. informing the general education teacher of the recommended accommodations;
b. providing information concerning the student’s achievement levels, learning style, and behavioral needs;
c. offering assistance to the general education teacher on a scheduled basis, as recommended by the ARD/IEP committee; and
d. documenting contacts with the general education teacher.

8. On occasion, the ARD/IEP committee will recommend that a specific subject be taught in a combination general education/special education instructional arrangement. The special education student’s grade, in this situation, may be determined proportionately by the general and special education teachers who provide the instruction, as determined by the ARD/IEP committee.

9. Unless the ARD/IEP committee designates otherwise,

a. when a student is enrolled in the homebound program, the general classroom teacher will be responsible for grading all assignments and recording grades on the report card and permanent record for all subject areas.
b. the progress of children enrolled in PPCD will be based upon advancement toward mastery of IEP goals and objectives. Report cards will be issued to PPCD children on the same schedule as non-disabled students on their campus.

VIII. TRANSFERS - STUDENTS NEW TO DISTRICT  (TAC §89.1050f)

For a student who is new to the LISD;

A. IEP is Available from School within Texas.
   When a student transfers within the state the ARD committee may, but is not required to, meet when the student enrolls and a copy of the student’s IEP is available. The parent(s) must indicate in writing that they are satisfied with the current IEP, and the LISD special education staff must determine that the current IEP is appropriate and can be implemented as written;
or

B. IEP is not Available or not Sufficient Information – Temporary Transfer ARD
   If the conditions of subsection A. above are not met, then the ARD committee will meet when the student enrolls.
   1. The parents must verify that the student was receiving special education services in the previous school district, or
   2. The previous school district must verify in writing or by telephone that the student was receiving special education services.
   3. At this meeting, the ARD committee must do one of the following:
      a. the ARD committee may determine that it has appropriate evaluation data and other information to develop and begin implementation of a complete IEP for the student; or
      b. the ARD committee may determine that:
         (1) valid evaluation data and other information from the previous school district are insufficient, or
         (2) valid evaluation data and other information from the previous school district are unavailable to develop a complete IEP.
   4. In the event valid evaluation data and other information from the previous school district are unavailable to develop a complete IEP, the ARD committee may authorize the provision of temporary special education services pending receipt of valid evaluation data from the previous school district or the collection of new evaluation data by the LISD. Include in the ARD/IEP summary that the student will be dismissed from special education if records or evaluations show the student is not eligible under the guidelines. If a self-contained placement may be indicated, the student:
a. may be served at the local campus until records are received, or
b. the local campus may schedule an ARD/IEP committee meeting with self-contained
campus staff for temporary placement consideration.
c. For either of the above options, the local campus must document information
received from the previous school on the Temporary Transfer ARD/IEP Committee
form.

5. A second ARD committee meeting must be held within 30 school days from the date of
the first ARD committee meeting to finalize or develop an IEP based on current
information.

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

IX. MUTUAL AGREEMENT  (TAC §89.1050)
All members of the ARD/IEP committee will have the opportunity to participate in a collaborative
manner in developing the Individual Education Program (IEP). Decisions of the committee
concerning required elements of the IEP will be made by mutual agreement of the required
members if possible. The committee may agree to an annual IEP or an IEP of shorter duration.

10 DAY RECESS
A. When mutual agreement about all required elements of the IEP is not achieved, the party
(parent(s) or adult student) who disagrees will be offered a single opportunity to have the
committee recess for a period of time not to exceed ten (10) school days. This recess is not
required when the student's presence on the campus presents a danger of physical harm to
the student or others; or when the student has committed an expellable offense or an offense
which may lead to a placement in an alternative education program (AEP). The ARD
committee will provide a written statement of the basis for the disagreement and also offer
the party who disagrees the opportunity to write their own statement of disagreement.
1. The requirements of this section do not prohibit the members of the ARD/IEP committee
from recessing for reasons other than the failure of the parents and the school district
from reaching mutual agreement about all required elements of an IEP.
2. In the ARD/IEP meeting, at any point when a parent or adult student disagrees with any
required element of the IEP, the ARD/IEP district representative must offer a single
opportunity to recess. At that time the district representative must inform parents or adult
student of the following:
   a. rights to file a complaint;
   b. rights to request mediation, or
   c. rights to request a due process hearing.
   d. ask if they have a copy of Procedural Safeguards. Document in the ARD/IEP
      minutes that the parents/adult student does have a copy of this document. If the
      parents/adult student do not have a copy of the Procedural Safeguards document,
      provide them with another copy, provide the explanation, and document receipt.
B. The date, time, and place for continuing the ARD/IEP committee meeting will be determined
by mutual agreement prior to the recess.
C. During the recess, the committee members will consider alternatives, gather additional data,
prepare further documentation, and/or obtain additional resource persons to enable the
ARD/IEP committee to reach mutual agreement.
D. If a ten (10) day recess is implemented and the ARD/IEP committee still cannot reach mutual agreement, the district will implement the IEP which it has determined to be appropriate for the student. The ARD/IEP should follow steps below:
1. The LISD campus administrator chairing the ARD/IEP committee will inform the parent or adult student with disabilities that we will implement the IEP which has been determined to be appropriate for the student.
2. A written statement of the basis for the disagreement will be included in the IEP. The members who disagree will be offered the opportunity to write their own statements. The written statement should be made during the actual meeting.
3. When LISD implements an IEP with which the parent(s) or adult student disagree, the campus will provide prior written notice to the parent(s) or adult student as required: (ARD Supplement Notice of Proposal or Refusal to Provide Services in Regard to Identification, Evaluation, Placement, or Free Appropriate Public Education). (34 CFR§300.503 and §300.504)

E. Signatures of the committee members present and an indication of each members’ agreement or disagreement with the committee decisions will be indicated on the ARD/IEP Committee Report.

X. GENERAL EDUCATION – ARD/IEP PROCESS [34 CFR 300.346(2d); TAC §89.1075(c)]

All teachers involved in the instruction of a special education student will have the opportunity to provide input and request assistance regarding the implementation of the student’s IEP. The general education teacher of a student with a disability, as a member of the ARD/IEP team, must, to the extent appropriate, participate in the development, review, and revision of the student’s IEP, including assisting in determination of:
A. appropriate positive behavior interventions and strategies, and
B. supplementary aids and services, program accommodations or supports for school personnel that will be provided for the student.

Opportunity to Request Support:
The immediate person for support to the general education teacher is the campus special education teacher. Special educators are in a collaborative role to problem solve any difficulties the special education student may be having in the general class. The ARD/IEP form designates a person responsible for coordination of monitoring the student and this is typically assigned to the special education teacher. Special Education teacher responsibilities to ensure participation of the general education teacher may include:
A. sending a memo/form to inform the teachers of your planning period and request some time to discuss the special education students in their room,
B. providing relevant sections of the student’s current IEP, such as goals and objectives, accommodations, and adaptations to all teachers that provide instruction to a student with disabilities,
C. offering conferences before or after school to discuss the current or proposed IEP of specific students... conferences may be used to discuss grading, homework; clarify student abilities and needs based on evaluation; discuss test accommodations for the teacher to use; or to suggest a behavioral strategy that may work for the student or review the behavioral intervention plan, if appropriate; etc.

Opportunity to Provide Input:
The general education teacher will have information regarding the special education teacher’s conference time and should use this time or after school conferences as one means to provide input regarding the student’s IEP. General education and special education teachers may collaborate, however, the special education teacher MUST send out the ARD/IEP committee teacher input form to all the student’s teachers prior to:
A. an initial ARD/IEP committee meeting,
B. an ARD/IEP meeting to consider existing evaluation data / reevaluation,
C. annual review ARD/IEP meeting, or
D. an ARD/IEP meeting considering other areas such as behavior, failures, etc..

Process for Submitting Requests for Further Consideration of Student’s IEP -
General Education Teacher:
A. There may be instances when the general educator does not agree with the decision of the ARD/IEP committee. There could be several reasons why this might occur, however, it is the responsibility of special educators first and foremost to support and assist the general education teacher in understanding the student’s disability and IEP. When a general education teacher does not agree, the special education teacher should:

1. make an appointment with the general education teacher to discuss the general education teacher’s concern;
2. listen carefully to each issue raised by the general education teacher, be sure he/she has a clear understanding of the student’s educational competencies and needs. Often the general education teacher with a concern is not present in the ARD/IEP committee meeting and has not seen the evaluation information and may not understand the student’s strengths and weaknesses.
3. collaboratively brainstorm possible solutions and alternatives which could be used, being careful to pay close attention to the ARD/IEP committee decisions on placement, accommodations, etc. Areas for support include pacing, methods, materials, etc.
4. keep notes of the issues and solutions to be tried and the person responsible for trying each solution, and the timeline;
5. set the next date and time to get together to discuss any progress toward the general education teachers concern after he/she has implemented the solutions from the meeting. The special education teacher should ways follow-up. Possible ways special education could support the general education teacher are listed above. Don’t hesitate to offer specific suggestions as ways to help the teacher.

* Progress should be noted and concerns resolved no more that two weeks from your first meeting date.

B. Involvement of the Principal: If steps above do not improve the situation, the Principal or Assistant Principal should be notified (if they have not already been involved). The following steps should be followed if a solution did not occur:

1. The special education teacher should inform the administrator of the steps taken above.
2. The administrator will determine any further resources to involve in resolving the situation. The diagnostician, coordinator, or special education director may be included in problem solving.
3. The administrator may call a meeting with the parties involved or may offer suggestions to the general education teacher, or may determine an ARD/IEP meeting is necessary to address the issues.
4. At any time during the process above, an ARD/IEP committee meeting may be requested by the Principal if determined necessary.

Process for Submitting Requests for Further Consideration of Student’s IEP -
Special Education Teacher:
A. Involvement of the Principal: If the special education teacher may submit requests for further consideration of the student’s IEP to the Principal or Assistant Principal.
B. The following steps should be followed if a solution did not occur:

1. The special education teacher should inform the administrator of the considerations regarding the IEP.
2. The administrator will determine any further resources to involve in resolving the situation. The diagnostician, coordinator, or special education director may be included in problem solving.
3. The administrator may call a meeting with the parties involved or may offer suggestions to the special education teacher, or may determine an ARD/IEP meeting is necessary to address the issues.

XI. PRIVATE / NONPUBLIC RELIGIOUS SCHOOL PROVISIONS
(includes home schools)

A. PLACED BY THE DISTRICT
Before the LISD places a student with a disability in, or refers a student to, a private school or facility, LISD will:
1. initiate and conduct an ARD/IEP meeting to develop an IEP and determine appropriate placement for the student; and
2. ensure that a representative of the private school attends the meeting. If the representative cannot attend, LISD will ensure participation in one or more of the following ways:
   a. individual or conference telephone calls
   b. written correspondence regarding input
3. after the student enters the private school or facility, any meetings to review and revise the student’s IEP may be initiated and conducted by the private school or facility at the discretion of the LISD. If the private school or facility initiates the meeting, the LISD will ensure that the parents and a representative from LISD:
   a. are involved in any decisions about the student’s IEP; and
   b. agree to any proposed changes in the program before those changes are implemented.
4. Even if a private school or facility implements a student’s IEP, responsibility for compliance remains with the LISD.
5. For special education students placed in a public or private/nonpublic institution or other care facilities, the ARD/IEP committee documented the following conditions:
   a. appropriate educational space for services is available: based on individual student needs space is adequate (if not adequate or no space is available, find alternative locations for providing the educational services)
   b. an initial on-site visit and annual on-site visits verify that the facility can, and will provide the services listed in the student’s IEP;
   c. the specific services which the LISD is unable to provide and which the facility will provide;
   d. verify during the initial ARD/IEP meeting and each subsequent annual ARD/IEP meeting that the facility:
       meets minimum standards for health and safety;
       the placement is needed and the need is continued at the annual; and
       the educational program provided at the facility is appropriate and the placement is the least restrictive environment for the student.
   e. the criteria and estimated timelines for returning the student to the LISD.

B. PLACED BY THE PARENTS IN PRIVATE SCHOOLS OR FACILITIES
§89.1096 - This section will be implemented beginning July 1, 2001. This section will expire on June 30, 2004.
Section 89.1096, Provision of Services for Students Placed by their Parents in Private Schools or Facilities, is amended to remove its expiration date of June 30, 2004, and reference to 19 TAC§89.1095. These changes reflect both the repeal of §89.1095 and the commissioner’s intent to extend the current timeline in regard to the availability of dual enrollment for eligible students with disabilities ages 3 and 4. The extension of this requirement will allow students with disabilities ages 3
and 4 to continue to be dually enrolled in both public and private schools and to receive the services and protections available under an individual education plan. The adopted amendment also clarifies that the protections afforded to 3 and 4 year old children under this section are intended to impact those students not yet eligible to attend kindergarten in a public school district.

§89.1096(c) which states “Parents of an eligible student ages 3 or 4 shall have the right to “dual enroll” their student in both the public school and the private school beginning on the student’s third birthday and continuing until the end of the school year in which the student turns five or until the student is eligible to attend a district’s public school kindergarten program, whichever comes first.”

Except as specifically provided by TAC §89.1096, the Lexington Independent School District obligation with respect to students placed by their parents in private schools are governed by 34 CFR §300.450 – §300.462. These regulations are listed in these guidelines on upcoming pages.

PARENT REFERS STUDENT WITH A DISABILITY

If the ARD/IEP committee determines that a private/nonpublic school student is eligible and is in need of special education instruction and/or related services, and the district can offer a free appropriate public education, the LISD is not responsible for providing educational or related services to the student, EXCEPT as provided below in 34 CFR §300.450 - §300.462, until such time as:

- the parents choose to enroll the student in the public school full-time, or
- if eligible student is age 3 or 4, the parent will have the right to “dual enroll” their student in both the LISD and the private school beginning on the student’s third birthday and continuing until the end of the school year in which the student turns five, subject to the following:

1. The student’s ARD/IEP committee will develop an IEP designed to provide the student with a FAPE in the least restrictive environment appropriate for the student.
2. From the IEP, the parent and the LISD will determine which special education and/or related services will be provided to the student and the location where those services will be provided, based on the requirements concerning placement in the least restrictive environment set forth in 34 CFR §300.550 - §300.553, and the policies and procedures of the LISD.
3. For eligible students age 3 or 4 served under this provision, the LISD is responsible for the employment and supervision of the personnel providing the service, providing the needed instructional materials, and maintaining pupil accounting records. Materials and services provided will be consistent with those provided for students enrolled only in the public school and will remain the property of the school district.
4. The LISD will provide special transportation with federal funds only when the ARD/IEP committee determines that the condition of the student warrants the service in order for the student to receive the special education and related services (if any) set forth in the IEP.
5. Complaints regarding the implementation of the components of the student’s IEP that have been selected by the parent and the district may be filed with the TEA. The procedures in 34 CFR §300.504 - §300.515 (relating to due process hearings) do not apply to complaints regarding the implementation of the components of the student’s IEP that have been selected by the parent and the district under this section.

DEFINITION OF PRIVATE SCHOOL CHILDREN (see 34 CFR§300.450)
Private school children with disabilities means children with disabilities enrolled by their parents in private schools or facilities other than children with disabilities referred by LISD to private schools or facilities for special education and related services.

CHILD FIND FOR PRIVATE SCHOOL CHILDREN (see 34 CFR§300.451)
See Administration Section – page 802.

**PROVISION OF SERVICES – BASIC REQUIREMENT** (see 34 CFR§300.452)
To the extent consistent with their number and location in the State, provision must be made for the participation of private school children with disabilities in the program assisted or carried out under IDEA by providing them with special education and related services in accordance with §300.453 - 300.462.

**EXPENDITURES** (see 34 CFR§300.453)
See Administration.

**DETERMINATION OF SERVICES** (34 CFR§300.454)
No private school student has an individual right to receive some or all of the special education and related services that the student would receive if enrolled in the LISD. Decisions about the services that will be provided to private school students with disabilities, must be made in accordance to the following:

Consultation:
The LISD staff will consult with representatives of private school students with disabilities, in a timely and meaningful way, considering the following:
1. in light of the funding (Section 8 of these Guidelines),
2. the number of private school students with disabilities,
3. the needs of the private school students with disabilities, and
4. the location; to decide the following:
   a. Which students will receive special education and related services;
   b. What services will be provided;
   c. How will the services be provided; and
   d. How will the services be evaluated?

**Genuine opportunity.** The LISD will give appropriate representatives of private school children with disabilities a genuine opportunity to express their views regarding each matter that is subject to the consultation requirements in above.

Timing:
The consultation required above must occur before the LISD makes any decision that affects the opportunities of private school students with disabilities to participate in services.

Decisions:
The LISD will make the final decisions with respect to the services to be provided to eligible private school students.

Services Plan:
If a student with a disability is enrolled in a religious or other private school and will receive special education or related services, the LISD will:
1. initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with the SERVICES PROVIDED section below, and
2. ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LISD will use other methods to ensure participation by the private school, including individual or conference telephone calls.

**SERVICES PROVIDED** (34 CFR§300.455)
General: The services provided to private school students with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools. In addition:
1. private school students with disabilities may receive a different amount of services than students with disabilities in the public school:
2. no private school student is entitled to any service or to any amount of a service the student would receive if enrolled in the public school;
3. services are provided in accordance with a services plan; each private school student with a disability who has been designated to receive services must have a services plan that describes the specific special education and related services that the LISD will provide to the student in light of the services that has been determined, through the process described in DETERMINATION OF SERVICES section above (and 34 CFR§300.453), LISD will make available to private school students.
4. The services plan must, to the extent appropriate,
   a. meet the requirements of content in the IEP (300.347), with respect to the services provided; and
   b. be developed, reviewed, and revised consistent with §300.342 (when IEPs must be in effect) and §300.346 (develop, review, and revision of IEP).
5. In addition, LISD will provide instructional materials and maintain pupil accounting records.

LOCATION OF SERVICE; TRANSPORTATION (34 CFR§300.456)
On-site. The services provided private school students with disabilities may be provided on-site at a student’s private school, including a religious school, to the extent consistent with law and consideration of placement in the least restrictive environment.

General: If necessary for the student to benefit from or participate in the services provided as determined necessary by the ARD/IEP committee, a private school student with a disability must be provided transportation:
1. from the student’s school or the student’s home to a site other than the private school; and
2. from the service site to the private school, or to the student’s home, depending on the timing of the services;
3. LISD is not required to provide transportation from the student’s home to the private school.
4. COST: If transportation is provided, the cost will be included in calculating whether LISD has met the minimum expenditure requirements of 34CFR §300.453 in Section 8 – Administration of this document.

COMPLAINTS (see 34 CFR§300.457 when due process is applicable and when it is inapplicable)
SEPARATE CLASSES PROHIBITED (see 34 CFR§300.458)
Funds NOT BENEFIT A PRIVATE SCHOOL (see 34 CFR§300.459)
USE OF PUBLIC SCHOOL PERSONNEL (see 34 CFR§300.460)
USE OF PRIVATE SCHOOL PERSONNEL (see 34 CFR§300.461)
PROPERTY, EQUIPMENT, AND SUPPLIES FOR BENEFIT OF PRIVATE SCHOOL CHILDREN WITH DISABILITIES (see 34 CFR§300.462)

STUDENTS ENROLLED BY PARENTS IN PRIVATE SCHOOLS WHEN F.A.P.E. IS AT ISSUE (34 CFR§300.403)
The Lexington Independent School District will follow all rules and regulations regarding child find, referral, procedural safeguards, evaluation, and ARD/IEP development in order to offer FAPE.

The LISD is not required to pay for the cost of education, including special education and related services, of a student with a disability at a private school or facility if LISD made FAPE available to the student and the parents elected to place the student at a private school or facility. However, LISD will include that student in the population whose needs are addressed through all Due Process and Procedural Safeguards measures.
Disagreements between a parent and LISD regarding the availability of a program appropriate for the student (FAPE), and the question of financial responsibility, are subject to due process procedures which may include mediation.

Reimbursements for private school placement. If the parents of a student with a disability, who previously received special education and related services under the authority of a public school, enroll the student in a private elementary or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to the enrollment.

Limitation on Reimbursement. The cost of reimbursement described above may be reduced or denied if:

1. at the most recent ARD/IEP committee meeting that the parents attended prior to removal of the student from the school, the parents did not inform the ARD/IEP committee that they were rejecting the placement proposed by the LISD to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense, or

2. at least, ten (10) business days (including any holidays that occur on a business day) prior to the removal of the student from the school, the parents did not give written notice to the school of the information described in 1. above, or

3. if, prior to the parents’ removal of the student from school, the LISD informed the parents, through the notice requirements, of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the student available for the evaluation; or

4. upon a judicial finding of unreasonableness with respect to actions taken by the parents.  
**Exception:** Notwithstanding the notice requirement in 1. of this section, the cost of reimbursement may not be reduced or denied for failure to provide the notice if:

a. the parent is illiterate and cannot write in English;

b. compliance with 1. would likely result in physical or serious emotional harm to the student;

c. the school prevented the parent from providing the notice; or

d. the parents had not received required notice pursuant to federal law.

**Prisons**

FAPE requirements for students with disabilities in adult prisons will be followed according to 34 CFR §300.311. The Lexington Independent School District will follow the evaluation, procedural safeguards, and ARD/IEP guidelines in conjunction with the specific federal laws pertaining to prisons.

**Students Returning From Residential Placement**

(see also Instructional Arrangements and Administration Sections of this document)

When a special education student has been residentially placed and then returns to LISD, a local ARD/IEP committee will be scheduled immediately to discuss the IEP and placement considerations to carry out the IEP.

If a student was not receiving special education services prior to residential placement, a referral may be initiated at the home school and an ARD/IEP meeting scheduled to review existing evaluation data and need for additional evaluation to determine if the student is a student with a disability.

**XII. OTHER SPECIAL CONSIDERATIONS BY THE ARD/IEP COMMITTEE**

Behavior Intervention Plan (BIP)
If a student whose behavior impedes his learning or that of others, the ARD/IEP committee documents consideration of strategies, including positive behavioral interventions, strategies, and supports to address that behavior. For more information on the BIP, see discussion of the Functional Behavior Assessment on page 209.

**Limited English Proficiency (LEP)**
If a student has limited English proficiency, consider the language needs of the student as these needs relate to the student’s IEP.

**Auditory Impairment (AI)**
The ARD/IEP committee or IFSP report documents:

A. Parents of students who have an auditory impairment are given written information, within the past year, about programs offered by the Texas School for the Deaf, including eligibility and admissions requirements and the rights of students related to admission.

B. Students in the regional day school programs for the deaf, the ARD/IEP team documents that the student’s hearing loss severely impairs processing linguistic information even with recommended amplification and that the loss adversely affects educational performance.

C. The unique communication, language, technology and instructional needs of students with auditory impairment are reviewed by the ARD/IEP committee. If the student is deaf or hard of hearing, consider opportunities for direct communications with peers and professional personnel in the student’s language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student’s language and communication mode.

**Visual Impairment (VI)**

A. For students who are “functionally blind”, the ARD/IEP committee documents that each member of the ARD/IEP team received information describing benefits of Braille instruction.

B. The ARD/IEP committee will specify the appropriate learning media based on the learning media evaluation report.

C. If a student is blind or has a visual impairment, provide for instruction in Braille and the use of Braille unless the ARD/IEP committee determines, after an evaluation of the student’s reading and writing media (including an evaluation of the student’s future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the student. If determined appropriate, the ARD/IEP committee will assure that Braille instruction is provided by a teacher certified to teach students with a visual impairment.

D. The ARD/IEP committee will describe or document:
   1. orientation and mobility training,
   2. the use of Braille and / or large print,
   3. other training to compensate for severe visual loss,
   4. access to special tools, appliances, aids, or devices necessary to compensate for a severe loss,
   5. that the parent has been made aware of the resources in the community and state,
   6. the plans and arrangements made for contacts with and continuing services to the student beyond regular school hours if needed to ensure the student learns the compensatory, communicative, orientation and mobility, social adjustment, and vocational skills required for success in classroom settings and to derive lasting, practical benefits from the education in the district,
   7. the eligibility folder contains parental consent or refusal of consent for the TEA to release relevant student registration data to specified entities for educational and statistical purposes, and
   8. parents have been given written information, within the past year, about programs offered by TSBVI, including eligibility and admissions requirements and the rights of students related to admission.
Deaf-Blindness (DB)
A. The ARD/IEP committee will specify the appropriate learning media based on the learning media assessment.
B. The ARD/IEP committee will describe or document:
1. orientation and mobility training,
2. the use of Braille and / or large print,
3. other training to compensate for severe visual loss,
4. access to special tools, appliances, aids, or devices necessary to compensate for a severe loss,
5. that the parent has been made aware of the resources in the community and state.
6. the plans and arrangements made for contacts with and continuing services to the student beyond regular school hours if needed to ensure the student learns the compensatory, communicative, orientation and mobility, social adjustment, and vocational skills required for success in classroom settings and to derive lasting, practical benefits from the education in the district,
7. the eligibility folder contains parental consent or refusal of consent for the TEA to release relevant student registration data to specified entities for educational and statistical purposes, and
8. parents have been given written information, within the past year, about programs offered by TSBVI, including eligibility and admissions requirements and the rights of students related to admission.

Texas School for the Blind and Visually Impaired (TSBVI) and Texas School for the Deaf (TSD) TAC §89.1085
See Instructional Arrangement section for specific ARD/IEP information.

Tape Recording
The LISD, the parent, or the adult student may audio-record the ARD/IEP committee meeting. All participants in the meeting will be informed that such a recording is being made. If a parent or adult student notifies the ARD/IEP committee that they will record the meeting, the district should also record the meeting and put a reference to the audio-tape in the student’s special education eligibility folder. A special file for tapes will be kept confidential and located with the eligibility folders.

XIII. ARD/IEP COMMITTEE DISMISSALS - CHANGE IN PLACEMENT

The ARD/IEP committee may recommend movement to less restrictive placement or a more restrictive placement. When a more restrictive placement is considered, the ARD/IEP committee will insure that current assessment is completed and carefully reviewed. When such movement changes the instructional arrangement, a copy of the ARD/IEP meeting will be given to the parent.

The local campus ARD/IEP committee has the authority to dismiss students from special education services. A reevaluation must be completed before determining that the student is no longer a student with a disability. All dismissals from services/programs should be documented on the ARD/IEP report.
- Exception: [34 CFR §300.534(2)] The evaluation is not required before the termination of a student’s eligibility due to graduation with a regular high school diploma, or exceeding the age eligibility for FAPE under the State law.

Graduation:
Graduation also constitutes a change in placement requiring Notice and ARD action is required. The ARD/IEP report documents that the ARD/IEP committee, when appropriate, requested in writing and considered the written recommendations from:
- appropriate adult service agencies;
- the views of the parent; and,
- the views of the student, when appropriate.

For more information on graduation requirements, please see the IEP section of this document.

Homebound:
The ARD/IEP committee will dismiss students from homebound services. Local policy regarding a doctor’s release will be followed when allowing the student to return to Campus (see Instructional Arrangements section under Homebound for more information on dismissals.)
# INDIVIDUAL EDUCATIONAL PROGRAM DEVELOPMENT (IEP) (ARD / IEP)

## I Content of IEP
- including Visual Impairments and Autism
- Parental Rights Regarding Adult Students

## II IEP Development (Teacher Responsibilities)
- Initial ARD/IEP
- Review ARD/IEP

## III Changes in the IEP

## IV IEP Annual Review

## V Extended School Year Service - ESY
- Definition
- TEA Criteria
- Identification of Students Needing ESY
- Additional Considerations

## VI Transition

## VII Graduation (including Personal Graduation Plan)
INDIVIDUAL EDUCATIONAL PROGRAM DEVELOPMENT (IEP)
(34 CFR §300.342 - §300.347 and TAC §89.1055)

Clarification: The IDEA federal regulations refer only to the Individual Education Program (IEP) developed for a student. However, in Texas, the Admission, Review, and Dismissal (ARD) Committee incorporates all elements of the federal IEP requirements. These two terms (ARD/IEP) are used interchangeably in our Guidelines.

I. CONTENT OF THE I.E.P.

The Individual Educational Program (Admission, Review, and Dismissal (ARD) committee decisions) for each student will comply with all requirements of §34 CFR 300.342 - §300.347. The IEP must:
* be in effect before special education and related services are provided,
* begin on the date designated by the ARD/IEP committee meeting,
* be in effect at the beginning of each school year for each student with a disability within our jurisdiction,
* be provided to each general education teacher, or is accessible to all other special education teachers, related service provider, and other service providers who are responsible for its implementation, and
* in addition, each teacher and provider is informed of his/her specific responsibilities related to implementing the child’s IEP and the specific accommodations and supports that must be provided.

A. The IEP will include a statement of:

1. the student’s present levels of competencies taken from the results of the initial and most recent evaluation data. This statement will include:
   a. present level of educational performance, including strengths and how the student’s disability affects the student’s involvement and progress in the general curriculum
   b. physical abilities and disabilities which would affect participation in instructional settings or in physical education;
   c. behaviors which affect educational placement, programming, or discipline; and
   d. skills which may be prerequisite to participation in vocational education, when appropriate;
   e. for preschool children, as appropriate, how the disability affects the child’s participation in appropriate activities;

2. measurable annual goals, including benchmarks or short-term objectives, related to -
   a. meeting the student’s needs that result from the student’s disability to enable the student to be involved in and progress in the general curriculum (the same curriculum as for nondisabled children) or for preschool children, as appropriate to participate in appropriate activities; and
   b. meeting each of the student’s other educational needs that result from the student’s disability;

3. the special education and related services to assist the student to benefit from special education. Supplementary aids and services to be provided to the student, or on behalf of the student;

4. a statement of the program interventions, accommodations, modifications or other devices/services including any necessary supports for school personnel that will be provided for the student to:
   a. advance appropriately toward attaining the annual goals;
   b. be involved and progress in the general curriculum in accordance with A.1.a. above and to participate in extracurricular and other nonacademic activities; and
c. be educated and participate with other students with disabilities and nondisabled students in the activities described in 4.a.-b.

5. the projected date for the beginning of the services and accommodations described in 3. above, and the anticipated frequency, location, and duration of those services and accommodations;

* the IEP documents the amount of time in special education and related services, and necessary supplementary aids and services to benefit from special education

6. an explanation of the extent, if any, to which the student will not participate with nondisabled in the activities described in 4b. above.

7. the IEP must include a statement of any individual allowable accommodations in the administration of assessment instruments developed in accordance with TEC §39.023, or district-wide assessments of student achievement that are needed in order for the student to participate in the assessment. If the ARD/IEP committee determines that the student will not participate in a particular state or district-wide assessment of student achievement (or part of an assessment), the IEP must include a statement of:

a. why that assessment is not appropriate for the student;
b. the grade level for the SDAA, if appropriate; or
c. if appropriate, how the student will be assessed using a locally developed alternative assessment and the instructional level.

8. the results of the student’s performance on state/district-wide assessment programs;

9. how the student’s progress toward the annual goals will be measured;

10. concerns of the parents for enhancing the education of their child;

11. how the student’s parents will be regularly informed (through such means as periodic report cards), at least as often as parents are informed of their nondisabled students progress, of -

a. their student’s progress toward the annual goals; and
b. the extent to which that progress is sufficient to enable the student to achieve the goals by the end of the year.

12. a statement addressing nonexemption, modification, or exemption from some or all of the criterion-referenced assessment instruments, as appropriate. Accommodations of general classroom procedures, as specified in the student’s IEP will be provided during the testing process in accordance with §101.3. (relating to Testing Accommodations and Exemptions).

13. if ESY is determined appropriate, then the IEP must also include goals and objectives for ESY services from the student’s current IEP (more information on ESY is in this section)

14. if student resides in a Residential Facility program, consider appropriate records and relevant information provided by the Residential Facility.

B. For students with visual impairments:

1. The IEP or IFSP will meet the TEC 30.002 (c – 4) and (e) for visually impaired students. Before placing a student with a visual impairment in a classroom setting or within a reasonable period of time after placement (as required for the student to succeed in classroom settings and derive lasting practical benefits from the education in the school district), the LISD will:

a. Provide training in compensatory skills
b. Communication skills;
c. Orientation and mobility;
d. Social adjustment;
e. Vocational or career counseling;
f. Provide a detailed explanation of the various service resources available to the student in the community and throughout the state;
g. Provide a detailed description of the arrangements made to provide the student with orientation and mobility training, instruction in Braille or use of large print, other training to compensate for serious visual loss, access to special media and special tools, appliances, aids, or devices commonly used by individuals with serous visual impairments;
h. Set forth plans and arrangements made for contacts with and continuing services to the student beyond regular school hours to ensure the student learns the skills and receives the training specified above.

i. For a functionally blind student, provide Braille reading and writing instruction that is sufficient to enable the student to communicate with the same level of proficiency as other students of comparable ability who are at the same grade.

2. include in the IEP content required in the Texas Education Code, §30.002(c) (10) below, assuring that staff assigned to work with the students have prompt and effective access directly to resources available through:
   a. cooperating agencies in the area with a list provided,
   b. the Texas School for the Blind and Visually Impaired,
   c. the Central Media Depository for specialized instructional materials and aids made specifically for use by students with visual impairments,
   d. sheltered workshops participating in the state program of purchases of blind-made goods and services, and
   e. other related sources. (the Regional Education Service Center maintains additional resources as well)

C. For students with autism, in addition to the requirements listed in A., the information will be considered and, when needed, addressed in the IEP:
   1. extended educational programming;
   2. daily schedules reflecting minimal unstructured time;
   3. in-home training or viable alternatives;
   4. prioritized behavioral objectives;
   5. prevocational and vocational needs of students, ages 12 or older;
   6. parent training; and
   7. suitable staff to student ratio.
   If the ARD/IEP committee determines that services are not needed in one or more of the areas specified in 1-7 above, the IEP must includes a statement to that effect and the basis upon which the determination was made.

D. §89.1049. Parental Rights Regarding Adult Students. 34 CFR §300.347(c) and §300.517, and TEC §29.017
   1. Beginning at least one year before a student reaches 18 years of age, the student’s individualized education program (IEP) must include a statement that the student has been informed that, unless the student’s parent or other individual has been granted guardianship of the student under the Probate Code, Chapter XIII, Guardianship, all rights granted to the parent under the Individuals with Disabilities Education Act (IDEA), Part B, other than the right to receive any notice required under IDEA, Part B, will transfer to the student upon reaching age 18. After the student reaches the age of 18, except as provided by subsection 2. of this section, the LISD will provide any notice required under IDEA, Part B, to both the adult student and the parent.

   2. In accordance with 34 CFR §300.517(a)(2), and TEC §29.017(a), all rights accorded to a parent under IDEA Part B including the right to receive any notice required by IDEA Part B, will transfer to an 18-year-old student who is incarcerated in an adult or juvenile, state or local correctional institution, unless the student’s parent or other individual has been granted guardianship of the student under the Probate Code, Chapter XIII, Guardianship.

   3. The LISD will notify in writing the adult student and parent of the transfer of parental rights, as described in 1. and 2. of this section, at the time the student reaches the age of 18. This notification is separate and distinct from the requirement that the student’s IEP include a statement relating to the transfer of parental rights beginning at least one year before the student reaches the age of 18. This notification is not required to contain the elements of notice referenced in 34 CFR §300.503, but must include a statement that
parental rights have transferred to the adult student and provide contact information for the parties to use in obtaining additional information.

4. A notice under IDEA, Part B, that is required to be given to an adult student and parent does not create a right for the parent to consent to or participate in the proposal or refusal to which the notice relates. For example, a notice of an admission, review, and dismissal (ARD) committee meeting does not constitute invitation to, or create a right for, the parent to attend the meeting. However, in accordance with 34 CFR §300.344(a)(6), the adult student or the LISD may invite individuals who have knowledge or special expertise regarding the student, including the parent.

5. Nothing in this section prohibits a valid power of attorney from being executed by an individual who holds rights under IDEA, Part B.

E. IEP Statement of Transition Services - see page 438

F. Prisons. (34 CFR §300.311)
The LISD will comply with all federal and State regulations regarding students in adult prisons.

II. IEP DEVELOPMENT (Special Education Teacher Responsibilities)

A. Initial ARD/IEP Meeting. The special education teacher responsibilities in the IEP process are to:
   1. complete the draft IEP goals and objectives, based on appropriate evaluation, selecting a minimum of one goal and one objective for each subject or developmental area anticipated; (remember the general education teacher(s) to the extent appropriate, should participate in the development, review, and revision of the student’s IEP, and
   2. complete the IEP by writing in any individualized items needed:
      a. complete header information marking DRAFT IEP,
      b. complete proposed evaluation procedures, and criteria.
   3. may send draft IEP goals and objectives to the parent one week prior to ARD/IEP meeting;
   4. write the date the IEP is accepted by ARD/IEP committee on the IEP during the ARD.
   5. make copies of the accepted IEP goals and objectives.
      a. One copy is to be filed in the student eligibility folder with the completed ARD/IEP forms, and
      b. additional copies will be distributed as needed (i.e., general education teacher copy, etc.).
         (1) ensure that each teacher who provides instruction to a student with disabilities receives relevant sections of the student’s current IEP and that each teacher be informed of specific responsibilities related to implementing the IEP, such as goals and benchmarks, and of needed accommodations, modifications, and supports for the child;
         (2) obtain signed documentation from the general education teachers that they have received relevant sections of the student’s IEP, such as goals and benchmarks, and of needed accommodations, modifications, and supports for the child for the list of special education students they instruct, and
      c. assist general education teachers who are involved in the student’s instruction to maintain documentation that they are modifying educational programs of students as specified in the ARD/IEP.
   6. The special education teacher’s copy is used to document progress in the same timely manner as students on your campus who are nondisabled...(ex. every 6 weeks).

B. Review ARD/IEP Committee Meetings:
1. in addition to presenting the new draft IEP goals and objectives,
2. submit the original IEP with progress documentation marked on the IEP, and
3. follow #1 through # 6 in A. above.

III. CHANGES IN THE I.E.P.

A. Recommendations for changes in the individual educational program (IEP), including changes in the student’s placement, must be made to the ARD/IEP committee for formal action. Revisions in the student’s IEP which need ARD/IEP committee action may include, but not be limited to:

1. any lack of expected progress toward the annual goals and in the general curriculum, if appropriate,
2. the results of any reevaluation conducted,
3. information about the student provided to, or by, the parents,
4. the student’s anticipated needs, or
5. other matters including but not limited to:
   a. when a student with disabilities fails;
   b. assigning a student to a classroom to receive instruction in a different curriculum area (i.e. reading comprehension, math calculation, etc.) than was designated by the last ARD/IEP committee;
   c. any addition or deletion of a related service;
   d. adding new objectives when all of the goals and objectives have been met;
   e. any change in schedule which would change the instructional arrangement, or for high school students-the graduation plan;
   f. when the teacher feels the IEP is not appropriate to the student’s need.

B. All disciplinary actions regarding student with disabilities will be in accordance with federal requirements and TEC Chapter 37, Subchapter A. The ARD/IEP committee will determine the instructional and related services to be provided during the time of expulsion. The student’s IEP will include goals and objectives designed to assist in returning the student to school and preventing significant regression.

IV. I.E.P. ANNUAL REVIEW

Each student’s individual educational program (IEP) will be reviewed at least annually to determine the student’s progress, the need for modifying the plan, and the student’s continued need for special education and related services. The ARD/IEP committee may schedule an earlier review date if needed for review, modification, failure, etc.

A. At the annual review, the current IEP objectives will be reviewed and documented on the IEP prior to the development and acceptance of a new IEP. (see: II. IEP Development – B.)

1. There should be some objectives that have been added/deleted/revised on the new IEP.
2. If there are no changes, the ARD/IEP committee should have written justification or the lack of revision and lack of a new IEP generated.

B. IEP’s will also be reviewed and documented at the beginning of the year and after breaks in the program for regression/recoupment information.

C. Also, progress on the IEP is documented in the same timely manner (ex. every 6 weeks) as other non-disabled students and reported to parents.
V. **EXTENDED SCHOOL YEAR SERVICES.** (§300.309 and §89.1065)
If ESY services is determined appropriate by the ARD/IEP committee, goals and objectives from the current IEP will be specified and included in the IEP. The LISD ensures that extended year services are available to each student with a disability to the extent necessary to ensure that FAPE is available to the student. See also the TEA document: Resource on Extended School Year Services which may be found on the TEA website.

A. **Definition**
Extended School Year services (ESY) are defined as individualized instructional programs beyond the regular school year for eligible students with disabilities:
1. beyond the normal school year of the district; 
2. in accordance with the student’s IEP; 
3. at no cost to the parents of the student.

B. **Texas Education Agency Criteria**
Services should be provided based on evidence presented to the ARD/IEP committee and the determination made whether the services are needed under the following criteria:

1. The need for ESY services must be determined on an individual basis by the ARD/IEP committee in accordance with Federal and State law. In determining the need for and in providing ESY services, a school may not:
   - limit ESY services to particular categories of disability; or
   - unilaterally limit the type, amount, or duration of ESY services.
2. The need for ESY services must be documented from formal and/or informal evaluations provided by LISD or the parents. The documentation will demonstrate that in one or more critical areas addressed in the current IEP objectives, the student has exhibited, or reasonably may be expected to exhibit, severe or substantial regression that cannot be recouped within a reasonable period of time. Severe or substantial regression means that the student has been, or will be, unable to maintain one or more acquired critical skills in the absence of ESY services.
3. The reasonable period of time for recoupment of acquired critical skills will be determined on the basis of needs identified in each student’s IEP.
   a. If the loss of acquired critical skills would be particularly severe or substantial, or if such loss results, or reasonably may be expected to result, in immediate physical harm to the student or to others, ESY services may be justified without consideration of the period of time for recoupment of such skills.
   b. In any case the period of time for recoupment will not exceed eight weeks.
4. A skill is critical when the loss of that skill results, or is reasonably expected to result, in any of the following occurrences during the first eight weeks of the next regular school year:
   a. placement in a more restrictive environment,
   b. significant loss of skills necessary for the student to appropriately progress in the general curriculum,
   c. significant loss of self-sufficiency in daily living skills as evidenced by an increase in the number of direct service staff and/or amount of time required to provide special education or related services,
   d. the loss of access to community-based independent living skills instruction or an independent living environment provided by noneducational sources as a result of regression in skills, or
   e. the loss of access to on-the-job training or productive employment as a result of regression in skills.
5. If the LISD does not propose ESY services for discussion at the annual review of a student’s IEP, the parent may request that the ARD/IEP committee discuss ESY services.
6. If a student for whom ESY services were considered and rejected loses critical skills because of the decision not to provide ESY services, and if those skills are not regained after the reasonable period of time for recoupment, the ARD/IEP committee will reconsider the current IEP if the student's loss of critical skills interferes with the implementation of the student's IEP.

7. For a student enrolling in LISD during the school year, information obtained from the prior school district as well as information collected during the current year may be used to determine the need for ESY services.

8. The provision of ESY services is limited to the educational needs of the student and will not supplant or limit the responsibility of other public agencies to continue to provide care and treatment services pursuant to policy and practice, even when those services are similar to, or the same as, the services addressed in the student's IEP. No student will be denied ESY services because the student receives care and treatment services under the auspices of other agencies.

9. LISD is not eligible for reimbursement for ESY services provided to students for reasons other than those set forth in this section.

C. Identification of Students Needing ESY services

The following guidelines will be used to assist in identifying students who may need ESY services:

1. Teachers will identify students who have experienced regression on specific IEP objectives by comparing the IEP reviews of the last six weeks of the previous school year with the student's mastery of those IEP objectives at the beginning of the school year, reteaching as necessary to recoup skills. This process applies to:
   a. students who did not receive ESY services, and
   b. students who did receive ESY services.

2. After the IEP review at the end of the first six weeks of the school year, teachers will document students who have not, even after reteaching during the first six weeks, recouped those objectives. This regression will be reviewed by the teacher to determine whether the regression is severe and/or substantial. In addition, follow #3 after two more weeks of reteach.

3. The teacher will conduct an additional IEP review for these objectives at the end of eight weeks, again submitting a report of students who have not recouped objectives after the additional two weeks of reteaching. This information is very important to determine appropriate ESY services/IEP recommendations.

4. Keep documentation (student work, anecdotal records, charting, etc.) on any student you will be recommending a need for ESY services. Report information you feel pertinent to your supervisor.

5. The ARD/IEP committee will consider the need for ESY services for:
   a. students who appear to have experienced severe and/or substantial regression - recoupment problems during this data gathering,
   b. other students referred by school personnel on an individual basis for consideration for ESY services, and
   c. students referred by parents or guardians for ESY services consideration.

6. The ARD/IEP committee will determine the appropriate IEP goals and objectives from the current IEP and amount of services needed to prevent severe/substantial regression.

7. The IEP’s of students receiving ESY services will be reviewed at the beginning of the fall term to determine whether were appropriate to prevent regression, or progress was made. (Follow steps 1 - 5 above)

D. Additional Considerations

For some students a regression might be considered substantial even though recoupment occurs in less than six to eight weeks, particularly in critical skill areas such as health and
safety, self-help and independent living skills. This must be an educational decision by the ARD/IEP committee, based on knowledge of the individual student's needs.

1. ESY services are not automatic year after year. The need must be determined each year by the ARD/IEP committee.

2. ESY services to be provided will be determined by the ARD/IEP committee for the individual student. Summer school is not synonymous with ESY services.

3. Services are not to be provided simply for recreational reasons or because the student would benefit from them or gain new skills.

4. The issue is whether the benefits accrued to the student during the school year on critical goals and objectives will be significantly jeopardized if he is not provided an educational program during the summer months.

VI. NEW - summer 2003 – HB2823 passed by the House 5-9-03 and the Senate 5-28-03 repealed the previous rules adopted December 17, 2002, including 29.011(b)-(e). New rules will be developed by the Commissioner of Education in the future. Following are listed the new House Bill and the existing Federal Regulations (IDEA).

A. House Bill 2823.

The commissioner shall by rule adopt procedures for compliance with federal requirements relating to transition services for students who are enrolled in special education programs under this subchapter §29.011(a). The procedures must specify the manner in which a student's admission, review, and dismissal committee must consider, and if appropriate, address the following issues in the student's individualized education program:

1. appropriate student involvement in the student's transition to life outside the public school system;

2. if the student is younger than 18 years of age, appropriate parental involvement in the student's transition;

3. if the student is at least 18 years of age, appropriate parental involvement in the student's transition, if the parent is invited to participate by the student or the school district in which the student is enrolled;

4. any postsecondary education options;

5. a functional vocational evaluation;

6. employment goals and objectives;

7. if the student is at least 18 years of age, the availability of age-appropriate instructional environments;

8. independent living goals and objectives; and

9. appropriate circumstances for referring a student or the student's parents to a governmental agency for services.

B. IDEA: §300.29 Transition services.

(a) As used in this part, transition services means a coordinated set of activities for a student with a disability that-

(1) is designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult service, independent living, or community participation;

(2) is based on the individual student's needs, taking into account the student's preferences and interest; and

(3) includes –

(i) Instruction;

(ii) Related services;

(iii) Community experiences;

(iv) The development of employment and other post-school adult living objectives; and

(v) If appropriate, acquisition of daily living skills and functional vocational evaluation.
(b) Transition services for students with disabilities may be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.

(c) If the student does not attend the ARD, the student’s preferences and interests are considered by information obtained in writing from the student, from interviews, conferences or other means appropriate.

C. IDEA: §300.347 Content of the IEP.
Transition services. The IEP must include-
(1) For each student with a disability beginning at age 14 (or younger, if determined appropriate by the IEP team), and updated annually, a statement of the transition service needs of the student under the applicable components of the student’s IEP that focuses on the student’s courses of study (such as participation in advanced-placement courses or a vocational education program); and

(2) For each student beginning at age 16 (or younger, if determined appropriate by the IEP team), a statement of needed transition services for the student, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.

D. IDEA: §300.344 Agency Participation.
(1) If an agency invited to send a representative to a meeting does not do so, the LISD will take other steps to obtain participation of the agency in the planning of any transition services.

(2) IF a participating agency other than the LISD fails to provide the transition services described in the IEP, the LISD will identify alternative strategies to meet the transition objectives for the student set out in the IEP.

VII. GRADUATION - [SBOE §89.1070]
A. Graduation with a regular high school diploma under B. or D. below terminates a student's eligibility for special education services under this subchapter and Part B of the Individuals with Disabilities Education Act (IDEA), 20 United States Code, §§1400 et. seq. In addition, as provided in Texas Education Code (TEC), §42.003(a), graduation with a regular high school diploma under B. or D. below terminates a student's entitlement to the benefits of the Foundation School Program.

B. A student receiving special education services may graduate and be awarded a high school diploma if:
1. the student has satisfactorily completed the state's or district's (whichever is greater) minimum curriculum and credit requirements for graduation applicable to students in general education, including satisfactory performance on the exit level assessment instrument; or
2. the student has satisfactorily completed the state's or district's (whichever is greater) minimum curriculum and credit requirements for graduation applicable to students in general education and has been exempted from the exit-level assessment instrument under TEC. §39.027(a)(2)(B). (ex. exempted because the assessment instrument, even with allowable modifications, would not provide an appropriate measure of the student’s achievement as determined by the student’s ARD committee)

C. A student receiving special education services may also graduate and receive a regular high school diploma when the student's admission, review, and dismissal (ARD) committee has determined that the student has successfully completed:
1. the student's individualized education program (IEP) and met one of the following conditions:
   a. full-time employment, based on the student's abilities and local employment opportunities, in addition to sufficient self-help skills to enable the student to maintain the employment without direct and ongoing educational support of LISD;
   b. demonstrated mastery of specific employability skills and self-help skills which do not require direct ongoing educational support of the LISD; or
c. access to services, which are not within the legal responsibility of public education, or employment or educational options for which the student has been prepared by the academic program.

2. the state’s or district's (whichever is greater) minimum credit requirements for students without disabilities, and

3. the state’s or district's minimum curriculum requirements to the extent possible with modifications/substitutions only when it is determined necessary by the ARD committee for the student to receive an appropriate education.

D. A student receiving special education services may also graduate and receive a regular high school diploma upon the ARD committee determining that the student no longer meets age eligibility requirements and has completed the requirements specified in the IEP.

E. When considering a student's graduation under C. above, the student will be evaluated prior to graduation as required by 34 CFR §300.534(c). The ARD committee will consider the evaluation, the views of the parent and/or student as appropriate, and when appropriate, seek in writing and consider written recommendations from adult service agencies.

F. Students who participate in graduation ceremonies but who are not graduating under C. above and who will remain in school to complete their education do not have to be evaluated in accordance with E. above.

G. Employability and self-help skills referenced under C. above are those skills directly related to the preparation of students for employment, including general skills necessary to obtain or retain employment.

H. Students with disabilities who are eligible to take the exit level assessment instrument but have not performed satisfactorily are eligible for instruction in accordance with the TEC §39.024.

I. For students who receive a diploma according to C. above, the ARD committee will determine needed educational services upon the request of the student or parent to resume services, as long as the student meets the age eligibility requirements.

VIII. PERSONAL GRADUATION PLAN §TEC 28.0212

NOTE: House Bill 1108, summer 2003, requires a Personal Graduation Plan. The bill further states for special education students, the IEP may serve as the Personal Graduation Plan if it incorporates the requirements.

A. A principal shall designate a guidance counselor, teacher, or other appropriate individual to develop and administer a personal graduation plan for each student enrolled in a junior high, middle, or high school who:

   1. does not perform satisfactorily on an assessment instrument administered under Subchapter B, Chapter 39; or
   2. is not likely to receive a high school diploma before the fifth school year following the student's enrollment in grade level nine, as determined by the district.

B. A personal graduation plan must:

   1. identify educational goals for the student;
   2. include diagnostic information, appropriate monitoring and intervention, and other evaluation strategies;
   3. include an intensive instruction program described by Section 28.0213 (found on page 413)
   4. address participation of the student's parent or guardian, including consideration of the parent's or guardian's educational expectations for the student; and
   5. provide innovative methods to promote the student's advancement, including flexible scheduling, alternative learning environments, on-line
instruction, and other interventions that are proven to accelerate the learning process and have been scientifically validated to improve learning and cognitive ability.

C. Notwithstanding Subsection B., a student's individualized education program developed under Section 29.005 (native language written or audio taped) may be used as the student's personal graduation plan under this section.
## RELATED SERVICES

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RELATED SERVICES (SBOE §89.1060, 34 CFR §300.7a, and §300.24)

Related services means transportation and such developmental, corrective, support services as are required to assist a student with a disability to benefit from special education. If a child with a disability needs only a related service and not special education, the child is not eligible under §300.7a, unless the related service is considered to be special education under State standards, the child would be eligible. (example: speech therapy is special education instruction in Texas)

Related services includes the following:
- speech-language pathology and audiology services,
- psychological services,
- physical and occupational therapy,
- recreation,
- early identification and evaluation of disabilities in children,
- counseling services, including rehabilitation counseling,
- orientation and mobility services and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

LISD See also the TEA document: Resource on Provision of Related Services for Students with Disabilities

A. Request For Related Services

In order to receive an evaluation to determine eligibility for related services, the ARD/IEP Committee will follow 34 CFR§300.533 in reviewing existing evaluation data to plan an appropriate evaluation. (see Full and Individual Evaluation section) The request for additional evaluation should be completed and forwarded to the appropriate Special Education Department staff member.

NOTE: Parents should be given written notice that additional evaluation will be conducted if the recommendation is outside of an ARD/IEP meeting or an ARD/IEP in which the parents are not present. Procedural Safeguards will be given and written consent must be obtained as described in Procedural Safeguards section.

B. Related Service Categories

1. Audiological Services
   a. identification of children with hearing loss;
   b. determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
   c. provision of habilitative activities, such as language habilitation, auditory training, speech reading, hearing evaluation, and speech conservation;
   d. creation and administration of programs for prevention of hearing;
   e. counseling and guidance of pupils, parents, and teachers regarding hearing loss;
   and
   f. determination of the student’s need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

2. Rehabilitation Counseling
   Rehabilitation counseling services are services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.
3. Counseling Services
Counseling services are services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel as are required to assist a child with a disability to benefit from special education. Parent counseling and training includes assisting parents in understanding the special needs of their child; providing information about child development; and helping parents acquire the skills necessary to allow them to support the implementation of their child’s IEP or IFSP.

4. Psychological Services
Psychological services include:
   a. administering psychological and educational tests, and other evaluation procedures;
   b. interpreting evaluation results;
   c. obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
   d. consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations;
   e. planning and managing a program of psychological services, including psychological counseling for students and parents,
   f. assisting in developing positive behavior intervention strategies as needed; and
   g. attending Student Assistance Team (SAT) meetings as requested.

Prior to requesting a psychological evaluation, school personnel should be able to document previous educational efforts and strategies and the results of those efforts including participation in or consideration for other programs within LISD. Further, an intellectual and academic evaluation must be completed.

Psychological services may be requested through the Student Assistance Team (SAT) meetings or an ARD/IEP committee. If a psychological is requested in an ARD/IEP meeting, the diagnostician will report the request. (See Section I. - Referrals for Specific Areas)

5. School Health Services
School health services, as a related service, are those provided by a qualified school nurse or other qualified person. Services are to eligible students with disabilities in addition to those routinely available to all students and may include the following:
   a. screening and referral for health needs;
   b. monitoring medication needed by students during school hours;
   c. consultation with physicians, parents, and staff regarding effects of medication, and emergency care training for staff and parents;
   d. counseling students with disabilities and their families concerning health care practices and services; and
   e. assistance with catheter, tube feeding and other school health service procedures.

6. Medical Diagnostic Services
Medical diagnostic services are provided by a licensed physician to determine a child’s medically related disability, which may result in a need for special education and related services.

7. Recreation Therapy
Recreation therapy includes evaluation of leisure function, therapeutic recreation services, recreation programs in the school and community agencies, and leisure education.
8. Orientation and Mobility
Orientation and mobility services means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community, including:
   a. teaching students spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel;
   b. teaching students to use the long cane, as appropriate, to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;
   c. teaching students to understand and use remaining vision and distance low vision aids, as appropriate; and
   d. other concepts, techniques, and tools, as determined appropriate.

9. Interpreting Services for Students who are Deaf (§89.1060)
Interpreting services include interpreting/translating receptively and expressively for persons who are deaf or hard of hearing. Interpreter will be certified in appropriate language mode(s) if certification in such mode(s) is available.

10. Social Work
   a. Social work includes: preparing a social or developmental history of a student with a disability,
   b. group or individual counseling with the student and family,
   c. working with those problems in a student’s living situation (home, school, community) that affect the student’s adjustment in school,
   d. mobilizing school and community resources to enable the student to learn as effectively as possible in his or her education program; and
   g. assisting in developing positive behavioral intervention strategies.

11. Transportation (includes TAC §89.1090 Residential Settings)
Transportation includes travel to and from school and between schools, travel in and around school buildings, and specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a student with a disability. In order to receive transportation service, the ARD/IEP committee must document eligibility and need.

Local Transportation Rules
The district’s rules and regulations govern special education bus students unless designated otherwise by an ARD/IEP Committee.

Violation of school bus rules and regulations may result in restrictions. The student will follow local guidelines unless the ARD/IEP committee recommendations are different.

Special education transportation procedures include the following:
   a. It is the responsibility of the parent to have the student ready for the bus each day.
   b. It is the responsibility of the parent to notify the Transportation Department of any change of address.
   c. If the student is to be transported to or from a place other than home, parent submits to the Transportation Department the student’s name and address, and the person’s name and address who will assume responsibility for the child.
d. Card files are maintained on all students; therefore, if home or work numbers change, parents notify the local campus, the Special Education Department, and the Transportation Department.

e. If the student will not be riding the bus for more than a day, parent contacts the Transportation Department in advance so that the driver can be notified.

Residential Settings (§89.1090)

For each student placed in a residential setting by the student’s ARD/IEP committee, including those students placed in the TSBVI and the TSD, the LISD (resident school in which the student would be enrolled under TEC 25.001, if the student were not placed at the TSBVI or TSD), shall be responsible for transportation at the beginning and end of the term and for regularly scheduled school holidays when students are expected to leave the residential campus. The LISD is not responsible for transportation costs for students placed in residential settings by their parents. Transportation costs shall not exceed the state approved per diem and mileage rates unless excess costs can be justified and documented. Transportation shall be arranged using the most cost efficient means. When it is necessary for the safety of the student, as determined by the ARD/IEP committee, for an adult designated by the ARD/IEP committee to accompany the student, round-trip transportation for that adult shall also be provided. The resident school and the residential facility shall coordinate to ensure that students are transported safely, including the periods of departure and arrival.

12. Occupational/Physical Therapy

The occupational and physical therapy includes:

a. improving, developing or restoring functions impaired or lost through illness, injury, or deprivation,

b. improving ability to perform tasks for independent functioning if functions are impaired or lost, and

c. preventing, through early intervention, initial or further impairment or loss of function.

The primary function is to directly assist the student to benefit from instruction. Occupational and physical therapy services will be provided when a disability adversely affects the educational performance. The therapist will aid the student to develop, increase, improve, and maintain skills that are prerequisites for the student to function within his educational environment.

In the case of physical and occupational therapy, services for students shall be prescribed by a physician for consideration by the ARD/IEP committee.

Occupational and Physical Therapy Service Levels

**LEVEL I - Individual Service**

The occupational therapist is the primary implementer of the related service stated in the IEP. Specific goals and objectives are written and integrated into the IEP for this service.

**LEVEL II - Student Centered**

The therapist assists the teacher in developing the IEP, which the classroom personnel implement. The frequency of consultation and the primary position responsible for implementing the program should be noted on the IEP. The IEP should reflect consultation that is provided by the therapist.
LEVEL III - Teacher Centered
This service will address an individual student’s educational program needs (e.g., pre-vocational, vocational activities, feeding and positioning programs and motor labs). This may be a one-time consult with no specific assessments performed. No formal occupational therapy goals or objectives are written.

LEVEL IV - Classroom Centered
This service will address groups of students and their educational program needs. This often may be a one-time consult with no specific evaluations performed. No objectives or goals are written.

LEVEL V - Program Centered
This service may address staff and/or entire system needs (e.g., environmental adaptations, inservice). No occupational therapy goals or objectives are written.

Discontinuation Of Occupational and/or Physical Therapy Services Will Occur When:
Discontinuation occurs upon ARD/IEP committee discussion of current evaluation and recommendation that OT/PT services are not required due to one of the following:

(1. The student has accomplished the goals targeted in the IEP (Individual Educational Program);
(2. The student has achieved the maximum benefit from occupational and/or physical therapy;
(3. The student’s physical dysfunction does not negatively affect his/her educational program;
(4. The student maintains progress and no evidence of change is seen;
(5. There is not a current OT/PT MEDICAL REFERRAL FORM; or
(6. The intervention will not impact the educational success of the student.

13. Other areas may be found in 34 CFR §300.22.

C. All appropriate evaluation criteria in the FIE and Disability sections will be followed for appropriate related services. Also, ARD/IEP criteria will be followed for related services.
DISCIPLINE FOR STUDENTS RECEIVING SPECIAL EDUCATION

I. Procedural Safeguards
II. Removals Totaling 10 School Days
III. Removals That Do Not Constitute a Change in Placement
IV. Short Term Removals (10 cumulative days or less) (more than 10 cumulative school days)
V. Change of Placement Analysis
VI. Removals That Do Constitute a Change in Placement (includes FBA, BIP, and manifestation determination)
VII. Authority of School Personnel
VIII. Free Appropriate Public Education (FAPE) for Students Removed
IX. Removals for Drugs or Weapons
X. Determination of Alternative Setting
XI. Authority of Hearing Officer
XII. Placement During Appeals Relating to Removals for Drugs/Weapons
XIII. Exceptions to General Rules
XIV. Use of Confinement, Restraint, Seclusion, and Time-Out
XV. Procedures for Use of Restraint and Time-out
XVI. Time-out Guidelines
XVII. Student Discipline Chart

TEC §37.004 Placement of Students with Disabilities
TAC §89.1050 Discretionary Placements if JJAEP
TEC §37.006 Removal for Certain Conduct
TEC §37.007 Expulsion for Serious Offenses
TEC §37.008 Alternative Educational Settings
34 CFR §300.527 Protection for Students not Yet Eligible for Special Education

DISCLAIMER
DISCIPLINE FOR STUDENTS WITH DISABILITIES

19 TAC §89.1050(g)
All disciplinary actions regarding students with disabilities shall be conducted in accordance with the most current federal and state laws. (34 CFR §300.121, §300.519 - 300.529 (relating to Discipline Procedures), TEC Chapter 37, Subchapter A (Alternative Settings for Behavior Management), TEC 37.004 (Placement of Students with Disabilities), and §89.1053 (relating to use of Restraint and Time-out).

Contact the Special Education Director for consideration of appropriate action relating to students with disabilities.

I. Procedural Safeguards
All procedural safeguards, including required notice and consents, will be followed throughout the process of disciplinary action for students with disabilities.

II. Removals Totaling 10 School Days
The local campus administrator is responsible for maintaining records on student discipline. Students with disabilities must be monitored by the administrator for total number of removals in order to follow state and federal disciplinary requirements outlined below.

III. Removals That Do Not Constitute a Change in Placement
School personnel may order, to the extent removal would be applied to students without disabilities, the removal of a student for not more than 10 consecutive school days for any violation of school rules, and additional removals of not more than 10 consecutive school days in that same year for separate incidents of misconduct (as long as those removals do not constitute a Change of Placement).

An ARD/IEP Committee will be convened either before or not later than ten (10) business days after the student was first removed for more than 10 school days in a school year.

A. The ARD/IEP committee will:
1. consider special education and all disciplinary records of the student with a disability prior to the final determination regarding the disciplinary action;
2. convene to develop an assessment plan if they had not conducted or planned a functional behavioral assessment (FBA), developed a Behavior Intervention Plan (BIP) to address the behavior, and implemented the BIP; (see FIE section for functional behavioral assessment); or
3. review and/or modify the Behavior Intervention Plan (BIP) if the student already had a BIP. Administrative staff in each building will:
   a. have a copy of the BIP for student's on their campus who have a BIP developed by the ARD/IEP Committee,
   b. follow provisions of the current BIP until the ARD/IEP committee reviews and determines any necessary changes (ex. BIP may include no detentions, ISS, etc. if specified in the BIP these are not to be used)
B. If the LISD initiates disciplinary procedures applicable to all students, the special education and disciplinary records of the student with a disability are transmitted for consideration by the person or persons making the final determination regarding disciplinary action.
IV. Short Term Removals

(10 cumulative school days or less)

A. The district need not provide services during periods of removal to a student with a disability who has been removed from the current placement for 10 school days or less in that school year, if services are not provided to a student without disabilities who has been similarly removed.

B. In the case of a student whose behavior impedes his or her learning or that of others, convene an ARD meeting, if appropriate, to consider strategies including positive behavior interventions, strategies, and supports to address that behavior.

(more than 10 cumulative school days)

Additional (beyond 10 cumulative days in a school year) short-term removals (of 10 consecutive days or less) for separate incidents of misconduct, are permitted, to the extent removals would be applied to nondisabled students (as long as those removals do not constitute a Change of Placement).

An ARD/IEP Committee will:

A. consider special education and disciplinary records of the student with a disability prior to the final determination regarding the disciplinary action;

B. review the student's BIP and its implementation to determine if accommodations / modifications are necessary;

C. If one or more members of the ARD/IEP committee believe that accommodations / modifications are needed, an ARD/IEP meeting will be held to modify the BIP and its implementation and to discuss the “pattern” of behavior causing removals.

D. For any days of removal of a student in excess of 10 school days in a school year, the ARD/IEP committee determines the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student’s IEP.

E. If the LISD initiates disciplinary procedures applicable to all students, the special education and disciplinary records of the student with a disability are transmitted for consideration by the person or persons making the final determination regarding disciplinary action.

V. Change of Placement Analysis

When a principal or other appropriate administrator recommends disciplinary removal from the student's current IEP placement, conduct a Change of Placement Analysis.

A. Count the days of disciplinary removal from the student’s current educational placement.

1. Portions of a school day that a child had been suspended would be included in determining whether the child had been removed for more than 10 cumulative school days or subjected to a change of placement.

2. An in-school suspension would not be considered a part of the days of suspension as long as the child is afforded the opportunity to:
   a. Appropriately progress in the general curriculum,
   b. Continue to receive the services specified on his or her IEP, and
   c. Continue to participate with nondisabled children to the extent they would have in their current placement

3. Whether a bus suspension would count as a day of suspension would depend on whether the bus transportation is a part of the child’s IEP.
   a. If the bus transportation is a part of the child’s IEP, a bus suspension would be treated as a suspension unless the LISD provides the bus service in some other way.
   b. If the bus transportation is not a part of the child’s IEP, a bus suspension would not be a suspension.

B. Determine whether the disciplinary removal(s) constitute(s) a change of placement. A disciplinary change of placement occurs if:
1. The removal is for more than 10 consecutive school days, or
2. The student is subject to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year and because of factors such as the length of each removal, the total amount of time the student is removed and the proximity of the removals to one another.

VI. Removals That Do Constitute a Change in Placement

A. The ARD/IEP Committee meeting will be held within 10 school days of the first disciplinary change in placement totaling more than 10 consecutive school days - expulsions, removal to alternative education programs, or suspensions or when the student is subjected to a series of removals that constitute a "pattern" because they cumulate to more than 10 school days in a school year. (34 CFR§300.519) Under Texas statute, a suspension may not exceed 3 school days. TEC§37.005

B. A "pattern" must be determined by factors such as length of removal, the total amount of time the child is removed, and the proximity of the removals to one another. Therefore, a child who has a BIP, for subsequent removals the ARD/IEP team members shall review the BIP and its implementation to determine if modification is needed. If one or more team members believes modifications are necessary an ARD/IEP committee will be convened. Otherwise, no ARD/IEP MEETING is required. For more information, see below:

1. Not later than the date on which the decision which resulted in the change of placement was made, LISD must notify the student's parents of the decision and provide the parents with notice of their procedural safeguards.
2. Immediately, if possible but in no case later than 10 school days after the date on which the decision to take action was made, LISD will convene a meeting of the student’s ARD/IEP committee.
3. Consider special education and disciplinary records of the student with a disability prior to the final determination regarding the disciplinary action.
4. If a FBA and BIP were not already in place, develop an assessment plan to include a functional behavioral assessment (FBA) and as soon as practical after completing the FBA, complete assessments required by the plan and develop a Behavior Intervention Plan (BIP) to address the behavior, or if a BIP was developed, review the plan and its implementation to address the behavior. (see FIE section for functional behavioral assessment)
5. Conduct a manifestation determination review:
   a. immediately if possible and the parents waive the 5 day notice, but not later than 10 school days after the first date of disciplinary action which proposes to change the student’s placement for more than 10 school days, or when the student is subject to a series of removals that constitute a “pattern”
   b. if drug/weapon offense has occurred,
   c. if a hearing officer’s approval is sought for interim placement of a dangerous student.

C. the manifestation review will consider:
   1. evaluation and diagnostic results or other relevant information supplied by the parents of the student,
   2. observations of the student, and
   3. the student’s IEP and placement.

D. The ARD/IEP Committee will determine in relationship to the behavior subject to disciplinary action:
1. whether or not the student’s IEP and placement were appropriate and the special education services, supplementary aides and services, and behavior intervention strategies provided were consistent with the student’s IEP,

2. whether or not, the student’s disability impaired the ability of the student to understand the impact and consequences of the behavior subject to disciplinary action, and

3. whether or not, the student’s disability impaired the ability of the student to control the behavior subject to disciplinary action.

* if the behavior is found to be a manifestation of the student’s disability, the LISD will take immediate steps to remedy any deficiencies found in the IEP, placement, or implementation.

* if the behavior is not a manifestation of the student’s disability, the LISD relevant disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner they would be applied to students without disabilities.

VII. Authority of School Personnel.

School personnel may order:

A. to the extent removal would be applied to students without disabilities, the removal of a student with a disability from the child’s current placement for not more than 10 consecutive school days for any violations of school rules, and additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement as in VI. A. and B. above.)

B. For any days of removal of a student in excess of 10 school days in a school year, the ARD/IEP committee determines the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student’s IEP.

C. A change in placement to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days if—
   1. the student carries a weapon to school or to a school function under the jurisdiction of the LISD or a State or local educational agency; or
   2. the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of LISD or a State or local educational agency. (controlled substance as defined by law)
   3. Follow steps in VI. A.-D. above.

VIII. Free Appropriate Public Education (FAPE) for Students Removed.

For students with disabilities who has been removed or suspended from school.

A. students who have been removed from their current placement for 10 school days or less in that school year, the LISD need not provide services, if services are not provided to a child without disabilities who has been similarly removed.

B. students who have been removed from the current placement in excess of 10 school days in a school year, LISD for the remainder of the removals must:
   1. Provide services to the extent necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student’s IEP, if the removal is:
      a. under the LISD’s authority to remove for not more than 10 consecutive school days as long as the removal does not constitute a change of placement, or
b. for behavior that is not a manifestation of the child’s disability.

2. Provide services consistent with X. below regarding determination of the appropriate interim alternative educational setting, if the removal is:
   a. for drug or weapons offenses; or
   b. based on a hearing officer determination that maintaining the current placement of the child is substantially likely to result in injury to the child or to others if he or she remains in the current placement.

3. Determine the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child’s IEP:
   a. if the child is removed under the authority of school personnel to remove for not more than 10 consecutive school days as long as that removal does not constitute a change of placement, the determination is made by school personnel, in consultation with the child’s special education teacher.
   b. if the child is removed because of behavior that has been determined not to be a manifestation of the child’s disability, the IEP team makes this determination.

IX. Removals for Drugs and Weapons
In the event a student with a disability has been removed to AEP for 45 calendar days or more for possessing a weapon at school or a school function or for using or possessing illegal drugs or selling or soliciting the sale of a controlled substance at school or a school function, the LISD:

A. convened a meeting of the student’s ARD/IEP committee and complied with I-VIII above; (see also pages 611-614)
B. Exception: that the student may be placed by school personnel at the AEP for not more than 45 calendar days (provided a student without a disability would be subject to such discipline for a similar amount of time) regardless of the results of the ARD/IEP committee meeting.

X. Determination of Alternative Setting §300.522
The interim alternative educational setting referred to must be determined by the ARD/IEP committee. Any interim setting in which a child is placed must-

A. be selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child’s current IEP, that will enable the child to meet the goals set out in that IEP; and
B. include services and modifications to address the behavior that are designed to prevent the behavior from recurring.

XI. Authority of Hearing Officer §300.521
A hearing officer may order a change in the placement of a child with a disability to an appropriate interim alternative education setting for not more than 45 days if the hearing officer, in an expedited due process hearing:

A. determines that the LISD has demonstrated by substantial evidence (beyond a preponderance of evidence) that maintaining the current placement of the child is substantially likely to result in injury to the child or to others;
B. considers the appropriateness of the child’s current placement;
C. considers whether the LISD has made reasonable efforts to minimize the risk of harm in the child’s current placement, including the use of supplementary aids and services; and
D. determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the child’s special education teacher, meets the requirements of VIII. above.
XII. Placement During Appeals Relating to Removals for Drugs and Weapons

If the student’s parent requests a due process hearing or an appeal to challenge the interim alternative education setting or the manifestation determination, the student must:

A. Remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period whichever comes first. *(this applies if the assignment to the alternative educational setting is 45 days or less)* or
B. Remain in the placement before the misconduct in question if the AEP assignment is for more than 45 calendar days or if the LISD proposes to change the student’s placement after the end of the 45 calendar days.
*(exception: the student placed at the AEP can remain at the AEP if the LISD obtains a ruling of a due process hearing officer or a judge of competent jurisdiction permitting the LISD to placed the student in the AEP pending the resolution of the due process hearing.)*

TEC §37.006(a), §37.007(a) Students with disabilities are not placed in alternative education programs solely for educational reasons - a student must meet the criteria of the TEC. See remaining pages in this section. 

More information on the Student’s Status During Proceedings may be found in the Procedural Safeguards section.

XIII. Exceptions to the General Rules:
A. Removal for Weapons or Drugs Offenses
B. The LISD seeks and obtains Hearing Officer Change of Placement due to dangerousness.
C. In situations where there is a serious infraction of school rules and the student’s parents agree (as they frequently do in such cases), school officials can move a student with a disability to an appropriate placement.

XIV. Use of Confinement, Restraint, Seclusion, and Time Out  TEC §37.0021

The Lexington Independent School District will NOT place students with disabilities in seclusion or confine in a locked box, locked closet, or other specially designed locked space as either a discipline management practice or a behavior management technique.

A. The following definitions are based on TEC §37.0021: (see also below TAC definitions)
   1. “Restraint” means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of a student’s body.
   2. “Seclusion” means a behavior management technique in which a student is confined in a locked box, locked closet, or locked room that:
      a. is designed solely to seclude a person; and
      b. contains less than 50 square feet of space.
   3. “Time-out” means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting:
      a. that is not locked; and
      b. from which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.

B. An employee, volunteer, or an independent contractor of LISD may not place a student in “seclusion”. This prohibition does not apply to the use of seclusion in a court-ordered placement, other than a placement in an educational program of a school district, or in a placement or facility to which the following laws, rules, or regulations apply:
1. The Children’s Health Act of 2000, Pub. L. No. 106-310, any subsequent amendments to that Act, any regulations adopted under that Act, or any subsequent amendments to those regulations.
2. 40 TAC §720.1001 - §720.1013
3. 25 TAC §412.308(e)

C. “Weapon” includes any weapon described under TEC §37.007(a)(1).

D. This section does not prevent a student’s locked, unattended confinement in an emergency situation while awaiting the arrival of law enforcement personnel if:
   1. the student possesses a weapon; and
   2. the confinement is necessary to prevent the student from causing bodily harm to the student, another person, or imminent serious property destruction.

E. The LISD will follow local policy on the use of restraint and time-out for students with disabilities if restraint or time-out is to be used for any students with disabilities. Section 3 of Senate Bill 1196 provides that not later than August 1, 2002, the commissioner of education shall adopt rules required by TEC 37.0021, on the use of restraint and time-out. These rules are listed below in TAC §89.1053.

XV. Procedures for Use of Restraint and Time-Out from TAC §89.1053

Procedures must be consistent with:

a. professionally accepted practices and standards of student discipline and techniques for behavior management; and

b. relevant health and safety standards; and

c. identify any discipline management practice or behavior management technique that requires a district employee or volunteer or an independent contractor of a district to be trained before using that procedure or technique. This does not apply to
   1. peace officer while performing law enforcement duties;
   2. juvenile probation, detention, or corrections personnel; or
   3. an educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of a school district.

A. Requirement to implement.

In addition to the requirements of 34 Code of Federal Regulations (CFR) §300.346(a)(2)(i) and (c), the LISD must implement the provisions of this section regarding the use of restraint and time-out. In accordance with the provisions of Texas Education Code (TEC) §37.0021 (Use of Confinement Restraint, Seclusion, and Time-Out) it is the policy of the state to treat all students with dignity and respect.

B. Definitions.

1. Emergency means a situation in which a student's behavior poses a threat of:
   (a) imminent, serious physical harm to the student or others; or
   (b) imminent, serious property destruction

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

3. Time-out means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting:
   (a) that is not locked; and
   (b) from which the student is not physically prevented from leaving.

C. Use of restraint.

A school employee, volunteer, or independent contractor may use restraint only in an emergency as defined in subsection B. of this section and with the following limitations:

1. Restraint will be limited to the use of such reasonable force as is necessary to address the emergency.

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

D. Training on use of restraint.

Training for school employees, volunteers, or independent contractors will be provided according to the following requirements:
1. Not later than April 1, 2003, a core team of personnel on each campus must be trained in the use of restraint, and the team must include a campus administrator or designee and any general or special education personnel likely to use restraint.
2. After April 1, 2003, personnel called upon to use restraint in an emergency and who have not received prior training must receive training within 30 school days following the use of restraint.
3. Training on use of restraint must include prevention and de-escalation techniques and provide alternatives to the use of restraint.
4. All trained personnel will receive instruction in professionally accepted practices and standards regarding behavior management and the use of restraint.

E. Documentation and notification on use of restraint.

In a case in which restraint is used, school employees, volunteers, or independent contractors will implement the following documentation requirements:
1. On the day restraint is utilized, the campus administrator or designee must be notified verbally or in writing regarding the use of restraint.
2. On the day restraint is utilized, a good faith effort will be made to verbally notify the parent(s) regarding the use of restraint.
3. Written notification of the use of restraint must be placed in the mail or otherwise provided to the parent within one school day of the use of restraint.
4. Written documentation regarding the use of restraint must be placed in the student's special education eligibility folder in a timely manner so the information is available to the ARD committee when it considers the impact of the student's behavior on the students learning and/or the creation or revision of a behavioral intervention plan (BIP).
5. Written notification to the parent(s) and documentation to the student's special education eligibility folder will include the following:
   (a) name of the student:
   (b) name of the staff member(s) administering the restraint:
   (c) date of the restraint and the time the restraint began and ended;
   (d) location of the restraint;
   (e) nature of the restraint;
   (f) a description of the activity in which the student was engaged immediately preceding the use of restraint;
   (g) the behavior that prompted the restraint;
   (h) the efforts made to de-escalate the situation and alternatives to restraint that were attempted: and
   (i) information documenting parent contact and notification.

F. Clarification regarding restraint.

For the purposes of subsections C. – E. of this section, restraint does not include the use of:
1. physical contact or appropriately prescribed adaptive equipment to promote normative body positioning and/or physical functioning;
2. limited physical contact with a student to promote safety (e.g., holding a student’s hand) prevent a potentially harmful action (e.g., running into the street), teach a skill, or provide comfort;
3. limited physical contact or appropriately prescribed adaptive equipment to prevent a student from engaging in ongoing, repetitive self-injurious behaviors: or
4. seat belts and other safety equipment used to secure students during transportation.

G. Use of time-out.
A school employee, volunteer, or independent contractor may use time-out in accordance with subsection B.3. of this section with the following limitations:
1. Physical force or threat of physical force will not be used to place a student in time-out.
2. Time-out may only be used in conjunction with an array of positive behavior intervention strategies and techniques and must be included in the student's individualized education program (IEP) and/or BIP if it is utilized on a recurrent basis to increase or decrease a targeted behavior.
3. Use of time-out will not be implemented in a fashion that precludes the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.

H. Training on use of time-out.

Training for school employees, volunteers, or independent contractors will be provided according to the following requirements:
1. Not later than April 1, 2003, general or special education personnel who implement time-out based on requirements established in a student's IEP and/or BIP must be trained in the use of time-out.
2. After April 1, 2003, newly-identified personnel called upon to implement time-out based on requirements established in a student's IEP and/or BIP must receive training in the use of time-out within 30 school days of being assigned the responsibility for implementing time-out.
3. Training on the use of time-out will be provided as part of a program which addresses a full continuum of positive behavioral intervention strategies, and must address the impact of time-out on the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.
4. All trained personnel will receive instruction in current professionally accented practices and standards regarding behavior management and the use of time-out.

I. Documentation on use of time-out.

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

J. Student safety.

Any behavior management technique and/or discipline management practice must be implemented in such a way as to protect the health and safety of the student and others. No discipline management practice maybe calculated to inflict injury, cause harm, demean, or deprive the student of basic human necessities.

K. Data collection requirement.

Beginning with the 2003-2004 school year, with the exception of actions covered by subsection F. of this section, cumulative data regarding the use of restraint must be reported through the Public Education Information Management System (PEIMS).

XVI. Time-Out

The staff of LISD will be trained and may follow the guidelines below in use of time-out. Time-out is outlined below as either Non-exclusionary, which is the least restrictive, or Exclusionary time-out which results from more serious behaviors. All rules above (G. – J.) will be implemented. Exclusionary time-out should be used when non-exclusionary attempts are not successful.

A. Non-exclusionary time-out:
1. Planned Ignoring: This is the simplest form of non-exclusionary time-out. Planned ignoring involves the systematic removal of social reinforcement (attention) by the teacher for a specific amount of time. When the student misbehaves, the teacher breaks eye contact, turns away, and stops all social interaction with the student. Planned ignoring assumes that the teacher’s social attention is reinforcing. If it is not, then this will not work to decrease the behavior. If planned ignoring is the
appropriate response, the teacher should prepare initially for an increase in the behavior before the behavior will decrease.

2. Head down on desk: This has been used by teachers for a long time. The student is simply told to put his head down on his desk for a short period of time. (timer may be used)

3. Observation time-out: The student is removed from his/her desk for misbehaving and is usually placed in a desk away from the main classroom activities for a short period of time. The student is allowed/required to observe the classroom discussion/activities, but is not allowed to actively participate in them. (use of timer recommended – 5 minutes and may reset once)

4. Non-observation time-out (instructional isolation): This is basically the same as observation time-out, except the student is not allowed to observe the classroom activities. Usually, the student is placed in a particular part of the classroom that does not provide for viewing other students. (use of timer recommended – 10 minutes and may reset once)

B. Exclusionary time-out: The student is removed from the classroom and placed in a separate environment for cooling down and instructional activities to resume. Clearly, this is more restrictive and other types of time-out should be attempted first.

1. Isolated instruction: This is extended time-out from the classroom. The student is required to complete class work in an isolated area in the classroom, another classroom, or the office.

2. In-school Suspension: This program is designed to supervise and assist students who have problems related to their general education setting. Reference the campus Student Code of Conduct for complete guidelines.

XVII. **Student Discipline Chart©**
Please refer to the most current Student Discipline Chart© developed by The Texas School Administrators’ Legal Digest - phone 940-382-7212. The Special Education Director will provide a current copy of the Legal Digest to each Principal. If you have any questions please contact the Special Education Director.
The following information has been taken from the above referenced Texas Education Code. Refer to LISD local district’s Policy and Procedures for additional information on Discipline. You may also download all sections of Chapter 37 by logging on to www.capitol.state.tx.us/statutes.

TEC §37.004 Placement of Students with Disabilities

A. In the LISD, the placement of a student with a disability who receives special education services may be made only by a duly constituted admission, review, and dismissal committee.

B. Any disciplinary action regarding a student with a disability who receives special education services that would constitute a change in placement under federal law may be taken only after the student’s ARD committee conducts a manifestation determination review. Any disciplinary action shall be determined after requiring the provision of functional behavioral assessments and positive behavioral interventions, strategies, and supports; and behavioral intervention plans.

C. A student with a disability who receives special education services may not be placed in alternative education programs solely for educational purposes.

D. A teacher in an alternative education program who has a special education assignment must hold an appropriate certificate or permit for that assignment.

Subsections E. and F. below expired September 1, 2003.

E. JJAEP: In a county with a juvenile justice alternative education program (JJAEP) established, the expulsion under §37.007 must occur in accordance with the following: The school district from which the student was expelled shall, in accordance with applicable federal law, provide the administrator of the JJAEP or the administrator’s designee with reasonable notice of the meeting of the student’s ARD committee to discuss the student’s expulsion. A representative of the JJAEP may participate in the meeting to the extent that the meeting relates to the student’s placement in the program. This subsection applies only to an expulsion under:

1. Section 37.007 (b), (c), or (f) described on the following pages; or
2. Section 37.007 (d) as a result of conduct that contains the elements of any offense listed in Section 37.007(b)(3) against any employee or volunteer in retaliation for or as a result of the person’s employment or association with a school district.

F. If, after placement of a student in a JJAEP under Subsection (E), the administrator of the program or the administrator’s designee has concerns that the student’s educational or behavioral needs cannot be met in the program, the administrator or designee shall immediately provide written notice of those concerns to the school district from which the student was expelled. The student’s ARD committee shall meet to reconsider the placement of the student in the program. The district shall, in accordance with applicable federal law, provide the administrator or designee with reasonable notice of the meeting, and a representative of the program may participate in the ARD meeting to the extent that the meeting relates to the student’s continued placement in the program.
**TAC §89.1050  Discretionary Placements in Juvenile Justice Alternative Education Programs (JJAEP)**

A. This section has been amended by HB 469 to expire on September 5, 2005.
B. In a county with a JJAEP, a local school district will invite the administrator of the JJAEP or the administrator’s designee to an admission, review, and dismissal (ARD) committee meeting convened to discuss a student’s expulsion under the provisions listed in Texas Education Code (TEC) §37.004(e), relating to offenses for which a school district may expel a student. The reasonable notice of the ARD committee meeting must be provided consistent with 34 CFR §300.345 and §300.503 and TEC §89.1015 of this title (relating to Time Line for All Notices), and a copy of the student's current individualized education program (IEP) must be provided to the JJAEP administrator or designee with the notice. If the JJAEP representative is unable to attend the ARD committee meeting, the representative must be given the opportunity to participate in the meeting through alternative means including conference telephone calls. The JJAEP representative may participate in the meeting to the extent that the meeting relates to the student's placement in the JJAEP and implementation of the student's current IEP in the JJAEP.
C. In accordance with TEC, §37.004(f), when the JJAEP administrator or designee provides written notice of specific concerns to the school district from which a student was expelled under one of the provisions listed in TEC, §37.004(e), relating to offenses for which a school district may expel a student, an ARD committee meeting must be convened to reconsider placement of the student in the JJAEP. The reasonable notice of the ARD committee meeting must be provided consistent with 34 CFR, §300.345 and §300.503 and §89.1015 of this title (relating to Time Line for All Notices). If the JJAEP representative is unable to attend the ARD committee meeting, the representative must be given the opportunity to participate in the meeting through alternative means including conference telephone calls. The JJAEP representative may participate in the meeting to the extent that the meeting relates to the student's continued placement in the JJAEP.

**TEC §37.006 Removal for Certain Conduct**

(a) Except as provided by Section 37.007(a)(3) or (b), a student shall be removed from class and placed in an alternative education program as provided by Section 37.008 if the student commits the following on or within 300 feet of school property, as measured from any point on the school's real property boundary line, or while attending a school-sponsored or school-related activity on or off of school property:

1. engages in conduct punishable as a felony;
2. engages in conduct that contains the elements of the offense of assault under Section 22.01(a)(1), Penal Code, or terroristic threat under Section 22.07, Penal Code;
3. sells, gives, or delivers to another person or possesses or uses or is under the influence of:
   - (A) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.; or
   - (B) a dangerous drug, as defined by Chapter 483, Health and Safety Code;
4. sells, gives, or delivers to another person an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code, commits a serious act or offense while under the influence of alcohol, or possesses, uses, or is under the influence of an alcoholic beverage;
5. engages in conduct that contains the elements of an offense relating to abusable glue or aerosol paint under Sections 485.031 through 485.035, Health and Safety Code, or relating to volatile chemicals under Chapter 484, Health and Safety Code; or
6. engages in conduct that contains the elements of the offense of public lewdness under Section 21.07, Penal Code, or indecent exposure under Section 21.08, Penal Code.

(b) Except as provided by Section 37.007(d), a student shall be removed from class and placed in an alternative education program under Section 37.008 if the student engages in conduct that
contains the elements of the offense of retaliation under Section 36.06, Penal Code, against any school employee.

(c) In addition to Subsection (a), a student shall be removed from class and placed in an alternative education program under Section 37.008 based on conduct occurring off campus and while the student not in attendance at a school-sponsored or school-related activity if:

(1) the student receives deferred prosecution under Section 53.03, Family Code, for conduct defined as a felony offense in Title 5, Penal Code;
(2) a court or jury finds that the student has engaged in delinquent conduct under Section 54.03, Family Code, for conduct defined as a felony offense in Title 5, Penal Code; or
(3) the superintendent or the superintendent's designee has a reasonable belief that the student has engaged in a conduct defined as a felony offense in Title 5, Penal Code.

(d) In addition to Subsection (a), a student may be removed from class and placed in an alternative education program under Section 37.008 based on conduct occurring off campus and while the student not in attendance at a school-sponsored or school-related activity if:

(1) the superintendent or the superintendent's designee has a reasonable belief that the student has engaged in conduct defined as a felony offense other than those defined in Title 5, Penal Code; and
(2) the continued presence of the student in the regular classroom threatens the safety of other students or teachers or will be detrimental to the educational process.

(e) In determining whether there is a reasonable belief that a student has engaged in conduct defined as a felony offense by the Penal Code, the superintendent or the superintendent's designee may consider all available information, including the information furnished under Article 15.27, Code of Criminal Procedure.

(f) Subject to Section 37.007(e), a student who is younger than 10 years of age shall be removed from class and placed in an alternative education program under Section 37.008 if the student engages in conduct described by Section 37.007. An elementary school student may not be placed in an alternative education program with any other student who is not an elementary school student.

(g) The terms of a placement under this section must prohibit the student from attending or participating in a school-sponsored or school-related activity.

(h) On receipt of notice under Article 15.27(g), Code of Criminal Procedure, the superintendent or the superintendent's designee shall review the student's placement in the alternative education program. The student may not be returned to the regular classroom pending the review. The superintendent or the superintendent's designee shall schedule a review of the student's placement with the student's parent or guardian not later than the third class day after the superintendent or superintendent's designee receives notice from the office or official designated by the court. After reviewing the notice and receiving information from the student's parent or guardian, the superintendent or the superintendent's designee may continue the student's placement in the alternative education program if there is reason to believe that the presence of the student in the regular classroom threatens the safety of other students or teachers.

(i) The student or the student's parent or guardian may appeal the superintendent's decision under Subsection (h) to the board of trustees. The student may not be returned to the regular classroom pending the appeal. The board shall, at the next scheduled meeting, review the notice provided under Article 15.27(g), Code of Criminal Procedure, and receive information from the student, the student's parent or guardian, and the superintendent or superintendent's designee and confirm or reverse the decision under Subsection (h). The board shall make a record of the proceedings. If the board confirms the decision of the superintendent or superintendent's designee, the board shall inform the student and the student's parent or guardian of the right to appeal to the commissioner under Subsection (j).

(j) Notwithstanding Section 7.057(e), the decision of the board of trustees under Subsection (i) may be appealed to the commissioner as provided by Sections 7.057(b), (c), (d), and (f). The student may not be returned to the regular classroom pending the appeal.
(k) Subsections (h), (i), and (j) do not apply to placements made in accordance with Subsection (a).

(l) Notwithstanding any other provision of this code, a student who is younger than six years of age may not be removed from class and placed in an alternative education program.

TEC - CHAPTER 37
§ 37.007. Expulsion for Serious Offenses

(a) A student shall be expelled from a school if the student, on school property or while attending a school-sponsored or school-related activity on or off of school property:

(1) uses, exhibits, or possesses:
   (A) a firearm as defined by Section 46.01(3), Penal Code;
   (B) an illegal knife as defined by Section 46.01(6), Penal Code, or by local policy;
   (C) a club as defined by Section 46.01(1), Penal Code; or
   (D) a weapon listed as a prohibited weapon under Section 46.05, Penal Code;

(2) engages in conduct that contains the elements of the offense of:
   (A) aggravated assault under Section 22.02, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;
   (B) arson under Section 28.02, Penal Code;
   (C) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or criminal attempt, under Section 15.01, Penal Code, to commit murder or capital murder;
   (D) indecency with a child under Section 21.11, Penal Code; or
   (E) aggravated kidnapping under Section 20.04, Penal Code;

(3) engages in conduct specified by Section 37.006(a)(3) or (4), if the conduct is punishable as a felony.

(b) A student may be expelled if the student, while on school property or while attending a school-sponsored or school-related activity on or off of school property:

(1) sells, gives, or delivers to another person or possesses, uses, or is under the influence of any amount of:
   (A) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.;
   (B) a dangerous drug, as defined by Chapter 483, Health and Safety Code; or
   (C) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code;

(2) engages in conduct that contains the elements of an offense relating to abusable glue or aerosol paint under Sections 485.031 through 485.035, Health and Safety Code, or relating to volatile chemicals under Chapter 484, Health and Safety Code; or

(3) engages in conduct that contains the elements of an offense under Section 22.01(a)(1), Penal Code, against a school district employee or a volunteer as defined by Section 22.053.

(c) A student may be expelled if the student, while placed in an alternative education program for disciplinary reasons, continues to engage in serious or persistent misbehavior that violates the district's student code of conduct.

(d) A student shall be expelled if the student engages in conduct that contains the elements of any offense listed in Subsection (a), and may be expelled if the student engages in conduct that contains the elements of any offense listed in Subsection (b)(3), against any employee or volunteer in retaliation for or as a result of the person's employment or association with a school district, without regard to whether the conduct occurs on or off of school property or while attending a school-sponsored or school-related activity on or off of school property.
(e) In accordance with federal law, a local educational agency, including a school district, home-rule school district, or open-enrollment charter school, shall expel a student who brings a firearm, as defined by 18 U.S.C. Section 921, to school. The student must be expelled from the student's regular campus for a period of at least one year, except that:

1. the superintendent or other chief administrative officer of the school district or of the other local educational agency, as defined by 20 U.S.C. Section 2891, may modify the length of the expulsion in the case of an individual student;
2. the district or other local educational agency shall provide educational services to an expelled student in an alternative education program as provided by Section 37.008 if the student is younger than 10 years of age on the date of expulsion; and
3. the district or other local educational agency may provide educational services to an expelled student who is older than 10 years of age in an alternative education program as provided in Section 37.008.

(f) A student who engages in conduct that contains the elements of the offense of criminal mischief under be referred to the authorized officer of the juvenile court regardless of whether the student is expelled.

(g) A school district shall inform each teacher of the conduct of a student who has engaged in any violation listed in this section. A teacher shall keep the information received in this subsection confidential. The State Board for Educator Certification may revoke or suspend the certification of a teacher who intentionally violates this subsection.

(h) Subject to Subsection (e), notwithstanding any other provision of this section, a student who is younger than 10 years of age may not be expelled for engaging in conduct described by this section.

TEC Chapter 37 (§37.008) The LISD will follow State Law for the Alternative Educational Setting.

34 CFR §300.527 Protections for children not yet eligible for special education and related services.

A. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any rule or code of conduct of the LISD, including any behavior described in Sections §300.520 or 300.521, may assert any of the protections provided for in this part if the LISD had knowledge (as determined in accordance with paragraph (B) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

B. Basis of knowledge. The Lexington Independent School District will be deemed to have knowledge that a child is a child with a disability if:

1. The parent of the child has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of LISD that the child is in need of special education and related services;
2. The behavior or performance of the child demonstrates the need for these services, in accordance with Section §300.7;
3. The parent of the child has requested an evaluation of the child pursuant to Sections §300.530.300.536; or
4. The teacher of the child, or other personnel of the LISD, has expressed concern about the behavior or performance of the child to the director of special education of LISD or to other personnel in accordance with the LISD's established child find or special education referral system.
C. Exception. A public agency would not be deemed to have knowledge under paragraph (b) of this section if, as a result of receiving the information specified in that paragraph, the LISD ~
    1. Either--
       (i) Conducted an evaluation under Sections §300.530-300536, and determined that the child was not a child with a disability under this part; or
       (ii) Determined that an evaluation was not necessary; and
    2. Provided notice to the child's parents of its determination under paragraph (C)(1) of this section, consistent with Section §300.503,

D. Conditions that apply if no basis of knowledge.
    1. If LISD does not have knowledge that a child is a child with a disability (in accordance with paragraphs (B) and (C) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors consistent with paragraph (D)(2) of this section.
    2. Limitations.
       a. If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under Sec. 300.520 or 300.521, the evaluation must be conducted in an expedited manner.
       b. Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services,
       c. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the LISD and information provided by the parents, the LISD shall provide special education and related services in accordance with the provisions of this part, including the requirements of Sections §300.520-300.529 and section 612(a)(1)(A) of the Act.

DISCLAIMER

The LISD will follow local district Board Policy regarding required laws for discipline of students with disabilities. These operating guidelines do not include all of the numerous regulations regarding student discipline, however, they do include many of the specific requirements pertaining to special education students with disabilities.
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Procedural Safeguards Notice

When a student is referred to special education for the first time for an individual comprehensive assessment, local campuses in Lexington Independent School District are responsible for providing a copy of An Explanation of Rights and Procedural Safeguards document to notify the student, parent, or guardian of students suspected of having a disability of their educational rights. The TEA adopted this written document based on the Office of Special Education Programs model which includes a full explanation of all procedural safeguards that meet the requirements of 34 CFR §300.504(b). The regular education designee at the local campus shall be responsible for explaining the document, for providing answers to questions pertaining to the document and for providing to parents updated copies of the document, as provided by TEA.

A. Distribution (34 CFR §300.504 a)

The Procedural Safeguards document developed by the Texas Education Agency must be provided to parents of a student with a disability, at a minimum:
1. upon initial referral for evaluation,
2. upon each notification of an ARD / IEP meeting,
3. upon reevaluation of the student,
4. upon receipt of a request for due process, and
5. upon a manifestation determination review, or if a removal is contemplated that constitutes a change of placement.

B. All Required Prior Written Notices (34 CFR §300.503 and §300.344)

Written notice must be given to the parents of a student within a reasonable time before Lexington Independent School District:
1. proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child; or
2. refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.
3. when the notice relates to an action proposed by LISD that also requires parental consent, notice may be given at the same time parental consent is requested.

The written notice must:
1. be written in language understandable to the general public;
2. be 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; and
3. include a statement that the parents of a student 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 the description of the procedural safeguards can be obtained.

If the native language is not a written language, the district shall take steps to insure:
1. that the notice is translated orally or by other means to the parent in his or her native language, or other mode of communication used by the parent;
2. that the parent understands the content of the notice; and
3. that there is written evidence of the above.
C. Additional Content of the Notice of Evaluation must include:
   1. a description of the action proposed or refused by Lexington Independent School District,
   2. an explanation of why the district proposes or refuses to take the action,
   3. a description of any options the district considered and the reasons why those options were rejected,
   4. a description of each evaluation procedure, test, record, or report the district uses as a basis for the proposal or refusal,
   5. a description of any other factors which are relevant to the district’s proposal or refusal,
   6. sources (more than one) for parents to contact to obtain assistance in understanding these provisions.
   7. indicate the date sent (unless the parents agree otherwise, provide written notice to parents at least five school days prior to evaluation).
   8. a statement that at parents request, prior to giving Consent for the Full and Individual Evaluation, parent will be provided with the name and type of psychological evaluation or test to be given to the child and an explanation of how it will be used to develop an individual education plan for the child.

D. Additional Content of the Notice of ARD/IEP Committee Meeting (TAC §89.1045)
Local campuses will take steps to ensure that one or both of the parents of the are present at each meeting or are afforded the opportunity to participate. The LISD will invite parents and adult students to participate as members of the ARD/IEP committee by providing written Notice. The parent or the LISD may invite other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate. The determination of the knowledge or special expertise will be made by the parent or LISD who invited the individual to be a member of the ARD/IEP committee. (see also ARD section - Parent Participation)

1. Content of the written Notice of ARD/IEP meeting must include:
   a. a description of the action proposed or refused by Lexington Independent School District,
   b. an explanation of why the district proposes or refuses to take the action,
   c. a description of any options the district considered and the reasons why those options were rejected,
   d. a description of each evaluation procedure, test, record, or report the district uses as a basis for the proposal or refusal,
   e. a description of any other factors which are relevant to the district’s proposal or refusal,
   f. sources for parents to contact to obtain assistance in understanding these provisions,
   g. a statement informing the parents about the State complaint procedures, including a description of how to file a complaint and the timelines under those procedures.
* include a statement that the ARD committee members will discuss, at the parent’s request the provision of any educational or related service not proposed for discussion by LISD.

2. The Notice of the ARD/IEP meeting must: (34 CFR §300.345 and §89.1015)
   a. be provided to parents at least 5 school days in advance of the ARD to ensure they will have an opportunity to attend,
   b. include the purpose, time, and location of the meeting and who will be in attendance,
   c. provide opportunity to schedule the meeting at a mutually agreed upon time and place, including rescheduling the meeting,
   d. For a student with a disability beginning at age 14, or younger, if appropriate, the notice must:
      (1. indicate that a purpose of the meeting will be the development of a statement of the transition services needs of the student, and
(2) indicate that the student will be invited.

e. For a student with a disability beginning at age 16, or younger, if appropriate, the notice must:
   (1) indicate that a purpose of the meeting is individual transition planning for the student,
   (2) indicate that the student will be invited, and
   (3) identify any other agency that will be invited to send a representative, if appropriate.

E. Timeline For Notice (TAC §89.1015)
State Board of Education rule interprets the federal term “reasonable time” as at least five school days. Parents may agree to waive the five school day notice period to which they are entitled.

F. Notice of Proposal or Refusal to Provide Services in Regard to Identification, Evaluation, Placement, or Free Appropriate Public Education
The Notice of Proposal or Refusal includes the following:
1. it is given in the native language or other mode of communication of the parent.
2. the date sent/mailed (unless the parents agree otherwise, provide written notice to parents at least five school days prior to acting on proposal or refusal).
3. the action proposed or refused,  (initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child)
4. why action was proposed or refused,
5. description of the options considered,
6. description of why options were rejected,
7. description of evaluation procedures, tests, records, or reports used as basis for the refusal,
9. other factors relevant to the proposal or refusal,
10. sources for parents to contact to obtain assistance in understanding these provisions,
11. the notice includes a full explanation of all procedural safeguards (Explanation of Procedural Safeguards).

G. Written Explanation Regarding Learning Disabilities. (House Bill 1339, summer 2003)
Beginning with the 2004-2005 school year, House Bill 1339 requires the agency to produce and provide to school districts a written explanation of the options and requirements for providing assistance to students who have learning difficulties or who need or may need special education. The explanation must state that a parent is entitled at any time to request an evaluation of the parent's child for special education services under §29.004. Each school year, the LISD will provide the written explanation to a parent of each district student by including the explanation in the student handbook or by another means.

H. Parental Rights Regarding Adult Students. 34 CFR §§300.347(c), 300.315(a)(2-3); 300.517, TAC §89.1049, TEC §29.017
1. Beginning at least one year before a student reaches 18 years of age, the student’s individualized education program (IEP) will include a statement that the student has been informed that, unless the student’s parent or other individual has been granted guardianship of the student under the Probate Code, Chapter XIII, Guardianship, all rights granted to the parent under the Individuals with Disabilities Education Act (IDEA), Part B, other than the right to receive any notice required under IDEA, Part B, will transfer to the student upon reaching age 18. After the student reaches the age of 18, except as provided by subsection 2. of this section, the LISD will provide any notice required under IDEA to both the adult student and the parent.
2. All rights accorded to a parent under IDEA Part B including the right to receive any notice required by IDEA will transfer to an 18-year-old student who is incarcerated in an adult or juvenile, state or local correctional institution, unless the student’s parent or
other individual has been granted guardianship of the student under the Probate Code, Chapter XIII, Guardianship.

3. The LISD will notify in writing the adult student and parent of the transfer of parental rights, as described in subsections 1. and 2. of this section, at the time the student reaches the age of 18. This notification is separate and distinct from the requirement that the student's IEP include a statement relating to the transfer of parental rights beginning at least one year before the student reaches the age of 18. This notification is not required to contain the elements of notice referenced in 34 CFR §300.503, but will include a statement that parental rights have transferred to the adult student, the adult student has the same right to make educational decisions as a student without disabilities, and provide contact information for the parties to use in obtaining additional information.

4. A notice under IDEA, Part B, that is required to be given to an adult student and parent does not create a right for the parent to consent to or participate in the proposal or refusal to which the notice relates. For example, a notice of an admission, review, and dismissal (ARD) committee meeting does not constitute invitation to, or create a right for, the parent to attend the meeting. However, in accordance with 34 CFR §300.344(a)(6), the adult student or the LISD may invite individuals who have knowledge or special expertise regarding the student, including the parent.

5. Nothing in this section prohibits a valid power of attorney from being executed by an individual who holds rights under IDEA, Part B.

II. CONSENT (34 CFR §300.500, §300.505)

A. Consent means the parent:
   1. has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;
   2. understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and/or lists the records (if any) which will be released and to whom;
   3. understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

   Note: With respect to A.3. above, the parent's ability to revoke consent, if invoked, is not retroactive, i.e., it does not negate an action that has occurred after the consent was given and before it was revoked.

   3. All consent forms must be maintained in the student's eligibility folder.

B. Parental consent must be obtained before:
   1. conducting an initial evaluation or re-evaluation,
   2. initial provision of special education and related services to a student with a disability
      Administration of any psychological examination or test:
      after obtaining consent, if LISD determines that an additional exam or test is required, the information on that exam or test will be provided to the parent and additional consent will be obtained time required for LISD to provide information and seek consent may not be counted toward the 60 calendar days for completion of an evaluation. If a parent does not give consent to the additional examination or test within 20 calendar days after the date LISD provided the parent the information, the parent’s consent is considered denied. 
      parent must sign the consent before an evaluation is initiated. If parent consent is not obtained for a reevaluation, the LISD must document that it has taken reasonable measures to obtain the consent.
   3. disclosure of any personally identifiable information (see also page 713)
   4. access to private insurance
   5. transfer of assistive technology devices when student transfers from LISD

Parental consent is not required before:
a. reviewing existing data as part of any evaluation or re-evaluation, or
b. administering a test or other evaluation that is administered to all children, unless before administration of that test or evaluation, consent is required of parents of all children.

C. Refusal of Consent.
If the parents refuse consent for initial evaluation or a reevaluation, LISD may continue to pursue those evaluations by using the due process procedures or the mediation procedures if appropriate, except to the extent inconsistent with State law. When a parent refuses or otherwise does not give consent prior to the initiation of formal evaluation procedures or for initial special education services:
1. Lexington Independent School District shall first ensure with all reasonable effort that the parent understands the proceedings and understands his or her rights.
2. LISD shall then attempt to come to agreement with parents.
3. LISD may then request a due process hearing or mediation
   NOTE: Schools should notify the Special Education Director if this step is contemplated.
4. LISD may evaluate or initially provide special education and related services to the child without the parent’s consent, subject to the parent’s rights under 34 CFR §300.510-300.513 if a hearing officer upholds LISD.

D. Failure to Respond to Request for Reevaluation
1. Informed parental consent need not be obtained for reevaluation if LISD can demonstrate that it has taken reasonable measures to obtain that consent, and the student’s parent has failed to respond.
2. To meet the reasonable measures requirement above, the LISD will use one or more of the following documentation of efforts to obtain consent:
   a. detailed records of telephone calls made or attempted and the results of those calls with documentation on the LISD copy of Notice of ARD form or attached;
   b. copies of correspondence sent to the parents and any responses received;
   c. detailed records of visits made to the parents’ home or place of employment and the results of those visits; or
   d. conference telephone calls to ensure parent receipt of the consent and their understanding.
3. The LISD may proceed with the responsibility to conduct a reevaluation after exhausting all avenues to obtain informed consent from the parent(s).
4. Efforts described in #2. above will be documented and in the student folder.
5. LISD will take whatever action is necessary to ensure that the parents understand the consent, including arranging for an interpreter for parents with deafness, or whose native language is other than English.

E. Parental Consent may not be Required
Parental consent may not be required as a condition of any benefit to the parent or the student except for the service or activity for which consent is required in B. above.

F. Consent for Disclosure of Confidential Information. (Transfers)
The LISD or previous school district is not required to obtain parental consent before requesting or sending student’s special education records if disclosure is conducted according to §§99.30 – 99.37 (relating to the disclosure of personally identifiable information from education records). The LISD will transfer student records to the receiving school district within 30 calendar days after the student is enrolled in the new school district. (see page 713)

G. Consent to use the Individual Family Service Plan (IFSP) instead of an IEP
The consent is requested in the native language or other mode of communication used by the parent or guardian. The consent form states that the parent has been fully informed and understands the activity for which consent is sought. The parent agrees in writing to the
decision for which consent is sought. Documentation will indicate that the parent was provided an explanation of the difference between the IFSP and an IEP. The documentation will also indicate that the parent understands that consent is voluntary and may be revoked at any time.

H. Limitations
The LISD not use a parent’s refusal to consent to one service or activity under IDEA to deny the parent or student any other service, benefit, or activity of the district, except as required of this part. [§300.505(e)]

III. PARENT PARTICIPATION IN MEETINGS (34 CFR §300.501)
See the ARD Section for definition of a parent and for other specific information.

Parents will receive notice of meetings to ensure they have the opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the student, and the provision of FAPE to the student. A meeting does not include:

1. the term does not include informal or unscheduled conversations involving LISD personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the student’s IEP,
2. the term also does not include preparatory activities that LISD personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

The LISD will make reasonable efforts to ensure that the parents understand, and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for an interpreter for parents with deafness, or whose language is other than English.

Definition: Parent (34 CFR §300.20) - A parent, guardian, or person acting in the place of a parent, such as a grand- parent or stepparent, with whom a student with disabilities lives. The term includes a surrogate parent who has been appointed in accordance with law, but does not include the state if the student is in the conservatorship of the state. A foster parent qualifies as a parent if:

a. the natural parent’s authority to make educational decisions on the student’s behalf has been extinguished under state law;
b. an ongoing, long-term parental relationship exists between the foster parent and the student,
c. a willingness to participate in making educational decisions on the student’s behalf exists, and
d. the interests of the foster parent do not conflict with the interests of the student.

IV. COMPLAINT PROCEDURES (§89.1150)
If there is a dispute relating to the identification, evaluation, or educational placement of or the provision of a free appropriate public education (FAPE), to a student with a disability, it is the intent of the TEA to encourage and support the resolution of any dispute at the lowest level possible and in a prompt, efficient, and effective manner.

The LISD should always be sure the parents have a current Procedural Safeguards document. If the parents say they do not have the document, provide them with the document, an explanation, and keep documentation that they have received the document. This documentation of receipt of the Procedural Safeguards is kept in the Special Education student eligibility file. The possible options for resolving disputes include, but are not limited to:

- meetings of the student’s ARD committee,
- meetings or conferences with the student’s teachers,
meetings or conferences, subject to LISD policy, with the campus administrator(s), the special education director, the superintendent or the board of trustees.

- requesting mediation through the TEA in accordance with IDEA and all regulations,
- filing a complaint with the TEA, or
- requesting a due process hearing through the TEA (upon the filing of a due process hearing, the parent and the school shall also be provided with an opportunity to resolve the dispute through the mediation process established by TEA).

Schools should contact the Special Education Director as soon as there is reason to believe any type of complaint will be made.

A. Parents may notify the local administration.
   Administration may encourage parents to follow local complaint procedures. The following may also be suggested:
   1. schedule an ARD Committee meeting to discuss concern,
   2. follow 10 day recess procedures to try to reach mutual agreement (see ARD Section),
   3. encourage the parents to contact the Special Education Director for a meeting to discuss possible alternatives or mediation.

B. Parents may notify the Texas Education Agency and file a complaint. The TEA will:
   1. collect information concerning special education and analyzing the information in conjunction with other information on file with the TEA;
   2. respond to inquiries concerning special education services;
   3. take appropriate action on substantial complaints;
   4. engage in mediation activities; and
   5. provide information on the formal procedures available in the impartial hearing process.

Filing a complaint: a complaint must include:
   1. a statement that LISD has violated a requirement of Part B of the Act
   2. facts on which the statement is based,
   3. alleged violation that occurred not more than one year prior to the date that the complaint is received unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received.

V. MEDIATION (34 CFR §300.506)

The mediation process must meet the following requirements:
1. the mediation process is voluntary on the part of both the LISD and the parent(s),
2. is not used to deny or delay a parent’s right to a due process hearing or to deny any other rights afforded under IDEA-Part B, and
3. is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

If agreement cannot be reached at the local level, mediation is a viable option. The LISD or the parents may request mediation through the Texas Education Agency. If mediation is not agreed upon by both the school and the parent, a due process hearing may be requested.

For specific steps to follow, see the Explanation of Rights and Procedural Safeguards document developed by the TEA. Always be sure to contact the Special Education Director at the earliest appropriate time prior to these steps.

VI. DUE PROCESS HEARINGS (§89.1151)
1. A parent or the LISD may initiate a due process hearing as provided in the IDEA and applicable federal regulations.
2. TEA has implemented a one tier system of due process hearings under IDEA.
3. Effective with requests for due process hearings filed on or after August 1, 2002, a parent or the LISD must request a due process hearing within one year of the date the complainant knew or should have known about the alleged action that serves as the basis for the hearing request. (more information on due process hearings is found on page 724 of this document)

VII. CONFIDENTIALITY (34 CFR §300.127, §300.500, and §300.560)

A. Definitions (§300.560)

Destruction of education records means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

Education Records means, except as may be provided otherwise below, those records, files, documents, and other materials that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution.

Participating Agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained.

Personally Identifiable Information means that information includes: the name of the student, the student’s parent, or other family member; the address of the student; a personal identifier, such as the student’s social security number or student number; or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

School Officials shall mean any employees, trustees, or agents of LISD as well as attorneys, consultants, and independent contractors who are retained by LISD.

B. Notice To Parents (34 CFR §300.561)

Notice that is adequate to fully inform parents about the requirements of §300.127 which is the confidentiality of personally identifiable information of students with disabilities.

This is an annual written notice provided in the primary or home language informing all parents of students in attendance of their rights. This is not limited to students receiving special education services. The information may be provided:
1. in district’s enrollment packets given at registration,
2. in local newspaper advertising,
3. posted in buildings,
4. district mail-outs.

Documentation will be kept by the designated district staff.

VIII. RECORDS

A. Access Rights (34 CFR §300.501 and §300.562)
The LISD shall permit parents to inspect and review education records relating to their student that are collected, maintained or used for purposes of identifying, evaluating, educational placement, or educating their student in the provision of FAPE.

1. The following guidelines shall apply when parents request to review or inspect records relating to the education of their student with disabilities:
   a. The LISD shall comply with a request of parents to review records without unnecessary delay and before any meeting regarding an IEP or hearing relating to the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child.
   b. LISD shall comply with the request in no case more than 45 days after the request has been made.

2. The right to inspect and review education records includes:
   a. the right to a response from LISD to reasonable requests for explanations and interpretations of the records;
   b. the right to request that LISD provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
   c. the right to have a representative inspect and review the records.

3. LISD may presume that the parent has authority to inspect and review the student’s records, unless LISD has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

B. Record Of Access (§300.563)

1. LISD shall maintain a record, kept with the eligibility file of each student, that indicates all individuals, agencies or organizations that have requested or obtained access to a student’s educational records collected, maintained or used under IDEA-Part B (except access by parents and authorized employees of the LISD).

The records shall include:
   a. at least the name of the person or agency that made the request,
   b. the date access was given, and
   c. the purpose for which the person or agency is authorized to use the records.
* If parts of the student eligibility folder are maintained in classrooms, access records are required if the folder contains information such as an ARD/IEP report, modification sheet(s), or any assessment reports. (DEC Reference Guide)

2. The record of access will be maintained as long as LISD maintains the student’s education record. The record of access shall be available only to parents, school officials responsible for custody of the records, and those state and federal officials authorized to audit the operation of the system.

3. Access Procedures: The cumulative record and special education legal folder shall be made available to the parent. Records may be reviewed during regular school hours upon request to the appropriate record custodian. The record custodian or designee shall be present to explain the record and to answer questions. The confidential nature of the student’s records shall be maintained at all times, and the records shall be
restricted to use only in the offices of the Superintendent, a principal, a counselor, or Special Education as designated by the appropriate record custodian. The original copy of the record or any document contained in the cumulative record shall not be removed from the school or the Special Education office.

4. Custodian of Records: The principal is custodian of all records for currently enrolled students at the assigned school. The superintendent is the custodian of records for students who have withdrawn or graduated. The special education director is custodian of all special education records. Addresses and phone numbers are listed in the appendix.

C. Records On More Than One Child (§300.564)
If material in the education record of a student includes information on more than one student, the parent or guardian shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

D. Types and Locations of Information (§300.565)

1. The LISD shall provide parents on request a list of the types and locations of education records collected, maintained, or used by LISD.

2. The designated record custodian and the LISD Special Education Director shall be responsible for the education records of LISD students. These records may include:
   a. admissions data, personal and family data, including certification of date of birth;
   b. standardized test data, including intelligence, aptitude, interest, personality, and social adjustment ratings;
   c. all achievement records, as determined by tests, recorded grades, and teacher evaluation;
   d. health service record including:
      (1) findings of any screening or health appraisal programs LISD conducts or provides for, which may include vision, hearing and scoliosis;
      (2) immunization records; and
      (3) dates for any periods of exclusion from school because of communicable disease and the name of the illness.
   e. attendance records;
   f. student questionnaires;
   g. records of teacher, counselor, or administrative conferences with the student or pertaining to the student;
   h. verified reports of serious or recurrent behavior patterns;
   i. copies of correspondence with parents and others concerned with the student;
   j. records transferred from other districts in which the student has been enrolled;
   k. records pertaining to participation in co-curricular activities;
   l. information relating to student participation in special programs;
   m. records of fees assessed and paid; and
   n. other records that may contribute to understanding of the student.

E. Fees (§300.566)

No fee may be charged to search for or to retrieve the education record of a student. A fee of $0.10 (10¢) per page may be charged for copies of education records that are made for the parents or students under this procedure, provided
that the fee does not effectively prevent them from exercising their right to inspect and review those records. A waiver of fee should be requested in writing. No fee will be charged to search for or to retrieve information.

F. Amendment of Records at Parent's Request (§300.567)

The parent who believes the information in the student's education records collected, maintained, or used is inaccurate or misleading or violates the privacy or other rights of the student may request the LISD to amend the information.

Within fifteen (15) school days of the record custodian's receipt of a request to amend records, the LISD shall notify the parents in writing of its decision on the request. If LISD decides to refuse to amend the information in accordance with the request, LISD shall inform the parent of the refusal, and advise the parent of the right to a hearing under §300.568.

1. Opportunity For a Hearing (§300.568)

If a hearing is requested to challenge information in the records, it shall be held within fifteen (15) school days after the request for a hearing is received. Parents shall be notified in advance of the date, time, and place of the hearing. A record custodian who is not responsible for the contested records, or designee, shall conduct the hearing. The parents shall be given a full and fair opportunity to present evidence and may be assisted or represented at the hearing, at their own expense.

2. Result of Hearing (§300.569)

The parents shall be notified of the decision of the hearing in writing within fifteen (15) school days of the hearing. The decision shall be based solely on the evidence presented at the hearing and shall include a summary of the evidence and reasons for the decision.

   a. If as a result of the hearing, LISD decides the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, the records will be amended and the parent informed in writing.

   b. If after the hearing, LISD decides the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, the parents shall be given a copy of this guideline and the opportunity, within thirty (30) school days, to place in the record a statement commenting on the information and/or setting forth any reason for disagreeing with the LISD's decision.

   c. Any explanation is maintained by the LISD, and if the contested record is disclosed, the explanation shall also be disclosed.

3. Hearing Procedures (§300.570)

A hearing held under §300.568 must be conducted according to the procedures under FERPA (Family Education Rights and Privacy Act §99.22).

   a. the hearing was held within a reasonable time after receiving the request,

   b. the parent was given notice of date, time, and place, in a reasonable time prior to the hearing,

   c. the hearing was conducted by an official of the LISD who did not have a direct interest in the outcome of the hearing,
d. the parents were given full and fair opportunity to present evidence relevant to the amendment to the record,
e. the decision was made by LISD in a reasonable time after the hearing and presented in writing to the parent
f. the decision was based solely on the evidence presented at the hearing, and the summary of evidence and the reasons for the decision were included in the written report of the hearing.
g. the parent or eligible student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.

G. Consent for Disclosure of Confidential Information (§300.571) (§99.30b)

1. Parental consent must be obtained before personally identifiable information is:
   a. disclosed to anyone other than officials of participating agencies collecting or using the information;
   b. used for any purpose other than meeting a requirement under the Individual with Disabilities Act. The LISD may not release information from these records without parental consent except as provided in the Family Educational Rights and Privacy Act (FERPA) - (see 4. below).

2. Written consent must be obtained from the student's parent (signed / dated) in order for personally identifiable information in education records to be released to any individual, agency, or organization other than the student himself and those listed in 4. below. (A copy is maintained in the student's eligibility file.) For more specific information on Consent requirements, see page 705.
   a. Such consent shall specify records to be released, the reason for such release, and to whom the records are to be released.
   b. Such information may also be released in compliance with a judicial order or subpoena provided that the parent and student are notified in advance of compliance.

3. Transcripts and Transfers of Records. LISD may forward education records upon request to officials of other schools or school systems in which the student intends to enroll without written consent under the conditions described in this procedure (see 4. below).

   LISD will try to obtain consent if the parent is available. LISD may request transcripts from previously attended schools for students transferring into our schools; however, the ultimate responsibility for obtaining transcripts from sending schools rests with the parent.

4. Personally identifiable information in education records, including directory information, may be released without the written consent of the student’s parents to the following:
   a. school officials, including teachers, who have a legitimate educational interests;

   “School officials” are deemed to have a "legitimate educational interest" in a student's records when they are working with the student; considering disciplinary or academic actions, the student’s case, compiling statistical data; or investigating or evaluating programs.
b. officials of other schools or school systems in which the student seeks or intends to enroll, provided that the LISD will notify the parent or student that it forwards education records to such officials; or
   (1. makes a reasonable attempt to notify the parent, unless the record transfer is initiated by the parent,
   (2. furnishes a copy of the transferred record to the parent if he so desires,
   (3. gives the parent an opportunity for a hearing to challenge the content of the record.

c. authorized representatives of the Comptroller General of the United States, the Secretary of Education or state educational authorities who require access to student or other records necessary in connection with the audit and evaluation of a state supported program or in connection with the enforcement of federal or state legal requirements that relate to such programs;
d. personnel involved with a student’s application for, or receipt of, financial aid;
e. state and local officials to whom such information is specifically required to be reported or disclosed by state statute adopted prior to November 19, 1974;
f. accrediting organizations that require the information for purposes of accreditation;
g. parents of a dependent student;
h. appropriate persons who, in an emergency, must have such information in order to protect the health or safety of the student or other person.

H. Safeguards (§300.572)

1. LISD shall protect the confidentiality of personally identifiable information in collection, storage, disclosure, and destruction stages.

2. One official in the district shall assume responsibility for ensuring confidentiality of personally identifiable information. The official responsible for ensuring the confidentiality of any personally identifiable information in special education records shall be the Special Education Director in the special education office which is located at:

   Third @ Burns
   Lexington, Texas  78947

3. All persons collecting or using this information shall receive training or instruction concerning the legal requirements involved in handling these records.

   Documentation of the training and those in attendance shall be maintained with the Special Education Director.

4. LISD shall maintain for public inspection a current listing of the names and positions of employees who may have access to this information. A current listing of names and positions of persons who may have access to special education records is maintained at the special education office.

I. Destruction of Information (§300.573)
1. LISD shall inform parents when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to the child.

2. LISD will destroy special education records at the parent’s request when records are no longer needed to provide educational services to the child and the criteria below are met.
   a. Parents have been reminded that the records may be needed by the student or the parents for social security benefits or other purposes.
   b. LISD shall maintain special education records a minimum of seven (7) years beyond dismissal, graduation, or transfer from the district.
   c. Efforts will be made to notify parents prior to destruction of such personally identifiable information. The state librarian will be notified.

3. Directory information may be maintained without time limit, including the student’s name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed.

J. Student’s Rights

Under the regulations for the Family Educational Rights and Privacy Act of 1974 [34 CFR99.5(a)], the rights of parents regarding education records are transferred to the student at age 18. In addition:
1. the rights accorded to parents under Part B of the Act are transferred to a student who reaches the age of majority, the rights regarding educational records must be transferred to the student.
2. however, the LISD will provide any notice required under Part B of the Act to the student and the parent.

K. Comprehensive System of Confidentiality of Records

The Superintendent shall develop and maintain a comprehensive system of student records and reports dealing with all facets of the school program operation. These data and records shall be stored in a safe and secure manner and shall be conveniently retrievable for utilization by authorized school personnel.

1. Cumulative Record: A cumulative record that complies with TEA requirements and standards shall be maintained for each student from entrance into LISD schools until withdrawal or graduation from LISD schools. This record shall move with the student from school to school and be maintained at the school where currently enrolled until graduation or withdrawal. Records for students who are no longer enrolled shall be housed in their respective schools for the period of time required by law. No permanent records may be destroyed without explicit permission from the Superintendent.

2. Directory Information: Directory information shall include the student’s name, address, telephone listing, date and place of birth, participation in officially recognized activities and sports, height and weight of members of athletic teams, dates of attendance, awards received, the most recent previous school attended by the student, and other similar information.
   a. Directory information shall be released to any individual or organization that files a written request with the Superintendent or designee.
   b. The LISD may release directory information if it has given public notice:
      (1. of the categories of information that it has designated as directory information,
      (2. of the right of the parent to refuse to permit the release of any or all of that information, and
      (3. of the period of time within which the parent must inform the district in
writing that such directory information not be released.

3. **Student Rights:** Whenever a student has attained eighteen (18) years of age and is no longer dependent or is attending an institution of post-secondary education, the permission or consent required of, and the rights accorded to, the student's parent under this policy shall only be required of and accorded to the student.

4. **Assessment Instruments:** The results of individual student performance on assessment instruments are confidential and may be made available only to the student, the student's parent or guardian, and to the school personnel directly involved with the student's education. However, overall student performance data may be aggregated and made available to the public with appropriate interpretations, at regularly scheduled Board meetings. Such information may not contain names of individual students or teachers.

5. **Notification of Rights:** The LISD shall give parents of students in attendance, or eligible students in attendance, notification of their rights under the Family Educational Rights and Privacy Act of 1974, and of the locations where copies of the district’s policy may be located, including notice of the right to file complaints concerning alleged failures by LISD to comply with the provisions of the Act. Parents of students identified as having a primary language other than English shall be notified in that language. Notices in English and Spanish to be posted in each school have been distributed to the building principals. Copies of the notices are available in the special education office.

### IX. **SURROGATE / FOSTER PARENT** (34 CFR §300.515)

#### A. Definition

As the term applies to the LISD, a surrogate parent is an individual who represents and protects the educational interests of a potential or identified student with a disability. A surrogate parent will be assigned for a student with a disability:

1. whose parent cannot be identified;
2. whose parents, after reasonable efforts, cannot be located; or
3. who is a ward of the State of Texas or the parental rights have been terminated under the Texas Family Code. (If the Department of Protective and Regulatory Services is appointed as the temporary or permanent “managing conservator” of the student, the student is a “Ward of the State.” The appointment of a surrogate is then required. ex. TDHR is managing conservator if there is a TDHR foster parent, usually the foster parent is appointed as the surrogate.) A copy of the court order should be maintained in the special education eligibility folder.

Unless parental rights have been terminated under the Texas Family Code, parents do not lose their rights to participate in the educational process of their children. Appointment may be made for students 18-22 in some instances if needed to assure that the student receives a free appropriate public education (FAPE).

#### B. Responsibilities

The responsibilities of the surrogate parent are to:

1. represent the child in the process of identification, evaluation, educational placement, and the provision of a free appropriate public education;
2. attend training provided for surrogate parents by the LISD;
3. learn the student’s needs; educational background; and nature of the student’s disability;
4. know the child including consulting with persons involved in the student’s education, including teachers, caseworkers, court-appointed volunteers, guardians ad litem, attorneys ad litem, foster parents, and caretakers.
5. serve the child’s educational interests including participation in the student's ARD/IEP,
6. examine education records and exercise independent judgment in pursuing the child’s interests
7. receive notice, grant consent, and
8. exercise the due process rights under applicable state and federal law.

C. Assurances
Assurances must be made by the individual selected to serve as a surrogate or foster parent. These assurances are reviewed at the training and documented on the application form signed by the surrogate / foster parent.

1. The individual may have no personal or professional interest which conflicts with the interest of the child the surrogate parent represents;
2. The individual may not be an employee of the LISD or of any other public agency responsible for or involved in the education or care of the child the surrogate parent represents;
3. The individual must have knowledge and skills that insure adequate representation of the child;
4. The individual must be a resident of the member school district where the student attends, and
5. The LISD may select as a surrogate a person who is an employee of a nonpublic agency that only provides non-educational care for the child and who meets the standards above.

*A foster parent in a home which is verified by the PRS or a child-placing agency shall not be deemed to have a financial conflict of interest by virtue of serving as the foster parent in that home. These homes include, but are not limited to, basic, habilitative, primary medical, or therapeutic foster or foster group homes. In addition, issues concerning quality of care of the child do not constitute a conflict of interest. Concerns regarding quality of care of the child should be communicated, and may be statutorily required to be reported, to PRS.

D. Compensation
A person who otherwise qualifies as a surrogate parent is not an employee of LISD solely because he or she is paid by LISD to serve as a surrogate parent.

E. Training Procedures (TAC §89.1047)
To become a surrogate parent, an interested individual or a recruited volunteer agrees to attend the training and make application through the Special Education Director.

1. The Special Education Director follows LISD procedures which include:
   a. giving surrogate parent an application form (which may be completed at training);
   b. checking the application for completion including personal or employer references when the form is returned;
   (1. If the application is not approved because of conflict of interest, the applicant is notified by the Special Education Director with written notice of such denial within 7 calendar days after the date on which the decision was made. The written notice shall:
      (a. specify the reason(s) the foster parent is being denied the right to serve as the surrogate parent or parent (the notice must specifically explain the interests of the foster parent that conflict with the interests of his/her child); and
      (b. inform the foster parent of his/her right to file a complaint with the TEA in accordance with 34 CFR §300.660-§300.662, relating to complaint procedures.
   (2. If the application is approved, the Special Education Director or designee will notify the applicant and schedule the applicant for the Surrogate Parent Training.
2. A foster parent claiming to have met training requirements should provide some evidence of training previously attended.

F. Training Requirements:
The training program will be provided in the native language or other mode of communication used by the surrogate/foster parent. Training requirements include an explanation of the provisions of federal and state laws, rules, and regulations relating to:
1. the identification of a student with a disability;
2. the collection of evaluation and re-evaluation data relating to a student with a disability;
3. the ARD committee process;
4. the development of an IEP and for a student who is at least 16 years of age, and ITP;
5. the determination of least restrictive environment;
6. the implementation of an IEP;
7. the procedural rights and safeguards available;
8. the sources that the surrogate parent may contact to obtain assistance in understanding the provisions of federal and state laws, rules, and regulations relating to students with disabilities.

G. Training Documentation for Volunteer as Surrogate Parent:
1. The individual assigned to act as a surrogate parent must complete the training program within 90 calendar days after the effective date of initial assignment as a surrogate parent.
2. Once the individual has completed a training program conducted or provided by or through the Texas Department of Protective and Regulatory Services (PRS), a school district, an education service center, or any entity that receives federal funds to provide IDEA training to parents, the individual shall not be required by any school to complete the additional training in order to continue serving as the student’s surrogate parent or to serve as the surrogate parent for other students with disabilities.
3. The LISD may provide additional training to surrogates parents and/or parents; however, LISD cannot deny an individual who has received the training from serving as a surrogate parent on the grounds that the individual has not been trained.
4. Prior to assigning an individual to act as a surrogate parent, training should be provided.
5. Individuals already serving as surrogate parents as of the effective date of this rule shall receive training within 90 calendar days.
6. The LISD shall keep records of those individuals who have received training and each person trained by our LISD will be given a certificate to take should they move to another school and need evidence of training.

H. Training Documentation for Assignment of a Foster Parents as Surrogate Parents
A foster parent may act as parent of a child with a disability, in accordance with §300.20 relating to the definition of parent, if he/she complies with the requirements of TEC §29.015(b), relating to foster parents, including the completion of the training programs described in this section.
1. The foster parent must complete the training within 90 calendar days after the effective date of this rule or the date of initial assignment as the parent, whichever comes later.
2. Once the individual has completed a training program conducted or provided by or through the Texas Department of Protective and Regulatory Services (PRS), a school district, an education service center, or any entity that receives federal funds to provide IDEA training to parents, the individual will not be required by any school to complete the additional training in order to continue serving as the student’s surrogate parent or to serve as the surrogate parent for other students with disabilities.
3. The LISD may provide additional training to surrogates parents and/or parents; however, LISD cannot deny an individual who has received the training from serving as a surrogate parent on the grounds that the individual has not been trained.
4. Prior to assigning a foster parent to act as a surrogate parent, training should be provided.
5. Foster parents already serving as surrogate parents as of the effective date of this rule shall receive training within 90 calendar days if there is no evidence training was previously provided by (PRS).

6. The LISD shall keep records of those individuals who have received training and each person trained by our LISD will be given a certificate to take should they move to another school and need evidence of training.

7. If the foster parent does not meet the criteria to serve as parent, the LISD will appoint a surrogate parent. The LISD will give preferential consideration to a foster parent of a student with a disability when assigning a surrogate parent for the child.

I. Surrogate Training Completed
When the applicant successfully completes the Surrogate Parent Training, a copy of those individuals trained as Surrogate Parents will be filed in the office of the Special Education Director.

J. Surrogate Parent Assignment Procedures
The principal or other person makes the request for a surrogate parent for an eligible LISD child. Procedures for requesting a surrogate parent are as follows:

1. Principal or other assigned staff person notifies the Special Education Director of need and potential surrogate parents.
2. The Special Education Director schedules training and notifies district Administration of completed training and the names of new surrogate parents.
3. The Special Education Director, Principal or designee notifies/contacts the student's assigned surrogate parent when appropriate.

X. COMPLIANCE MONITORING (TEC §29.010)

A. Compliance Monitoring
When the Texas Education Agency makes an on-site monitoring visit to LISD, they will obtain information from parents of students receiving special education services. A representative sample of parents will have an opportunity to provide information which may identify particular areas where the program seems to be operating in accordance with compliance requirements or where the program may have potential systemic compliance problems. LISD will provide assistance to identify and notify parents in order to obtain the necessary information.

SBOE and Commissioner Rules, IDEA federal regulations, and LISD Procedures are the documents primarily utilized as the standard references. Results of each visit are delineated in writing and given to the building administrator by the Special Education Director. The Special Education staff is available for assistance in any area pertaining to special education including staff development for the entire faculty when needed.

The special education administrative staff will periodically monitor campuses to ensure compliance with required special education procedures. Items to be monitored include but are not limited to:

1. Special Education Student Teacher Folders,
2. Special Education Eligibility Folders,
3. Procedures including those which reflect coordination between regular education and special education, and
4. Teacher schedules
B. Local Procedures Required  (SBOE §89.1075)

1. LISD shall maintain an eligibility folder on each student receiving special education services in addition to the student cumulative record. The eligibility folder must include, but need not be limited to: copies of referral data, documentation of notices and consents, evaluation reports and supporting data, ARD committee reports, and the student’s IEP.

2. For districts providing special education services to students with visual impairments, there shall be written procedures as required in the TEC 30.002(c)(10). (see section 400 ARD/IEP)

3. Each teacher involved in a student’s instruction has the opportunity to provide input and request assistance regarding the implementation of the student’s IEP. Guidelines are detailed in this document in the ARD section 400.

XI. INDEPENDENT EDUCATIONAL EVALUATION - IEE  (34CFR §300.502)

IEE means an evaluation conducted by a qualified examiner not employed by the school that is responsible for the student in question. If a parent disagrees with all or part of the LISD assessment, the parent may ask LISD to provide an Independent Educational Evaluation (IEE). If a parent asks LISD to provide an IEE, then without unnecessary delay the LISD must do one of the following:

A. Ensure the IEE is provided at public expense (the IEE must meet LISD criteria specified previously in the CIA Section and the evaluator must meet criteria listed under Qualifications of Special Education Personnel (listed in the Administration Section of this document); or

B. The LISD may choose to initiate a due process hearing to show that the evaluation is appropriate. If the district prevails in the hearing, the parent still has the right to an IEE but not at public expense.

1. If the parent obtains an IEE at private expense, the results may be presented as evidence at a hearing regarding the student unless the evaluation does not meet TEA criteria.

2. If a hearing officer requests an IEE as part of a hearing, the cost of the IEE must be at public expense.

Public expense means that LISD either pays for the full cost of the IEE or ensures that the evaluation is otherwise provided at no cost to the parent.

C. If a parent requests an IEE, the district may ask for the parent’s reason why he or she objects to the public evaluation. However, the explanation may not be required and we will not unreasonably delay either providing the IEE at public expense or initiating a due process hearing to defend our evaluation.

INFORMATION FOR PARENTS

A. District Evaluation
If LISD has not conducted an evaluation, the parent does not have a right to an independent evaluation at public expense. Only one IEE may be reimbursed for each comprehensive evaluation obtained by the district. The results of a parent-initiated IEE will be considered by the district, but such consideration does not make the district liable for reimbursement for the IEE.

B. Parents Notify District

Parents will be requested to notify the district of specific areas of disagreement when they disagree with the district’s evaluation. LISD may offer to resolve the parent’s disagreement by providing additional evaluation, but the parents are not required to accept the offer.

C. Where an IEE may be Obtained

Information on where an IEE may be obtained will be provided to parents on request. A list of individuals who can provide an IEE is available from the Special Education Office [§300.502 (a)(2)]. The district criteria (State/Federal requirements) applicable for all evaluations must also be followed for the IEE. See Evaluator Requirements below.

D. Request For an IEE at Public Expense (Steps to Follow):

1. Contact the Special Education Director to make the request in writing.
2. Make request to the ARD Committee for action.
3. Request IEE as soon as possible but no later than six months following the LISD evaluation in question.
4. Specify areas of disagreement with LISD’s evaluation and list assessment questions to be addressed by IEE.
5. Provide name of evaluator to allow LISD to:
   a. check certification/license of evaluator and
   b. contract directly with the evaluator.

E. Reimbursement or Payment

Reimbursement/payment will be made directly to evaluator upon receipt of IEE which meets all of the LISD’s assessment criteria. Parents obtaining an IEE without following these procedures will risk non-payment. Whenever an IEE is at public expense, the criteria under which the IEE is obtained, must be the same as the criteria which the school uses when it initiates an evaluation, to the extent those criteria are consistent with the parent’s rights to an IEE.

F. EVALUATOR REQUIREMENTS [34CFR §300.502(e)]

1. The independent examiner will have the same qualifications as the LISD assessment personnel (e.g., psychologist, associate psychologist, or educational diagnostician) as described in SBOE Rules and LISD procedures.
2. The evaluation will be conducted in the school building to which the student is assigned, unless clearly not feasible.
3. The independent examiner shall have access to the student’s cumulative folder and special education folders in gathering information about the student.

4. The independent examiner may meet with the school ARD committee to gather information about a student prior to the assessment and to share information following the assessment.

5. The independent examiner shall follow federal and state assessment regulations and rules, reporting requirements and established eligibility criteria for the diagnosis of students with disabilities.

6. The independent evaluation may be restricted to one assessment area upon mutual agreement by the LISD and parent.

7. The evaluator must be located within a 100 mile radius of the school district. This will allow the evaluator access to the public school for observation of the student and access to ARD/IEP meetings.

8. The evaluator must provide information in the same timely manner as required by district personnel including an original typed report to the LISD within 30 calendar days from the date that an IEE is approved by LISD and five days prior to the ARD meeting. The report must address the LISD format (which will be provided to the evaluator) for assessment and eligibility. Protocols must be available for review and the report must include an original signature and title of all assessment personnel involved in the evaluation. The report must comply with all requirements of state and federal regulations.

G. Criteria For Fee Setting

1. The Lexington Independent School District will pay a fee for the IEE which allows a parent to choose from among the qualified professionals in the area.

2. The LISD will not pay unreasonably excessive fees. An unreasonably excessive fee is one which is 10% above the prevailing fees in the area (or 20% above the Medicaid rate) for the specific test being considered.

3. Upon receipt of a request for payment of an unreasonably excessive fee, the LISD may request a hearing to challenge the right of parents to be reimbursed.

4. Parents will be allowed the opportunity to demonstrate to an ARD committee that unique circumstances justify an IEE that does not fall within the LISD’s criteria.

5. When service providers have a sliding scale fee based on parent income, the LISD will pay the amount charged to the parent.

6. In the event that a parent pursues an IEE independently, an original billing form must be submitted to the LISD prior to payment. Before reimbursement or direct payment is authorized, criteria must be met and the written report received.

7. Travel costs for examiner and/or parents will not exceed LISD rates for travel as established by state guidelines.

H. Parents Seeking Reimbursement For A Unilaterally Obtained IEE
1. The LISD will not consider a parent request for payment for a unilaterally parent-initiated IEE unless the request is made within a reasonable time after receipt of the results of the evaluation. A reasonable time is defined as 90 calendar days.

2. The request will be presented to the ARD Committee for action.

3. The LISD can request a due process hearing to prove its own evaluation is appropriate. This can occur before an IEE is conducted or, after the parent has obtained one and is seeking reimbursement.

4. The LISD will deny payment of an IEE conducted by an evaluator who does not meet minimum qualifications.

5. The LISD will deny payment of an IEE which does not meet minimum Texas Education Agency criteria for the specific disability identified.

6. The LISD will deny payment of an IEE which does not meet all state and federal requirements.

I. Consideration of Parent Initiated IEE

The results of a parent-initiated IEE obtained at private expense will be considered by the ARD committee in any decision made with respect to the provision of a free appropriate public education to the student (if the IEE meets TEA criteria). Such consideration does not make the LISD liable for payment of the evaluation.

XII. HEARINGS

(Hearings Concerning Students with Disabilities Under the IDEA) (includes 34 CFR §300.507 - §300.514)

Due Process Hearing (TAC §89.1151)

1. A parent or the LISD may initiate a due process hearing as provided in the IDEA and applicable federal regulations.

2. TEA has implemented a one tier system of due process hearings under IDEA.

3. Effective with requests for due process hearings filed on or after August 1, 2002, a parent or the LISD must request a due process hearing within one year of the date the complainant knew or should have known about the alleged action that serves as the basis for the hearing request.

Request for Hearing (TAC §89.1165)

1. The request for a due process hearing must be in writing and filed with TEA located at 1701 N. Congress Avenue, Austin, TX 78701

2. The request for public hearing may be filed by mail, hand delivered, or facsimile. The request for hearing will be deemed filed only when actually received by the TEA division responsible for legal services at the TEA.

3. The TEA has a model form which may be used to request a due process hearing. A petitioner is not required to use the model form. The LISD will provide upon request, this form to parents and eligible students. The form is also available on the TEA world wide web site and from the education service centers.

4. If the request for hearing does not specify the issues to be heard and the relief requested, the hearing officer will require the complaining party to supplement the request, orally, or in
writing, to clarify the issues to be heard at the hearing and the relief sought by the complaining party.

**Impartial Hearing Officer** (TAC §89.1170)

1. Each due process hearing shall be conducted by an impartial hearing officer selected by the Texas Education Agency.
2. The hearing officer has the authority to administer oaths, call and examine witnesses, rule on motions, including discovery and dispositive motions, determine admissibility of evidence and amendments to pleadings, maintain decorum, schedule and recess the proceedings from day to day, and make any other orders as justice requires, including the application of sanctions as necessary to maintain an orderly hearing process.
3. If the hearing officer is removed, dies, becomes disabled, or withdraws from an appeal before the completion of duties, the TEA may designate a substitute hearing officer to complete the performance of duties without the necessity of repeating any previous proceedings.

**Prehearing Procedure** (TAC §89.1180)

1. Promptly upon being assigned to a hearing, the hearing officer will schedule a prehearing conference to be held at a time reasonably convenient to the parties to the hearing. The prehearing conference will be held by telephone unless the hearing officer determines that circumstances require an in person conference. The hearing officer shall ensure that a written or, at the option of either party, an electronic, verbatim record of the prehearing conference is made.
2. The purpose of the prehearing conference will be to consider any of the following:
   a. specifying or simplifying issues,
   b. admitting certain assertions of fact or stipulations,
   c. establishing any limitation of the number of witnesses and the time allotted for presenting each party’s case, and/or
   b. discussing other matters as may aid in simplifying the proceeding or disposing of matters in controversy, including settling matters in dispute.
3. Promptly upon the conclusion of the prehearing conference, the hearing officer will issue and deliver to the parties, or their legal representatives, a written prehearing order which identifies:
   a. the time, place, and date of the hearing;
   b. the issues to be resolved at the hearing;
   c. the relief being sought at the hearing; the deadline for disclosure of evidence and identification of witnesses, which must be at least five business days prior to the scheduled date of the hearing (hereafter referred to as the “Disclosure Deadline”);
   d. the date by which the final decision of the hearing officer shall be issued; and
   e. other information determined to be relevant by the hearing officer.
4. No pleading, other than the request for hearing, are mandatory, unless ordered by the hearing officer. Any pleadings after the request for hearing will be filed with the hearing officer. Copies of all pleadings will be sent to all parties of record in the hearing and to the hearing officer. If a party is represented by an attorney, all copies will be sent to the attorney of record. Telephone facsimile copies may be substituted for copies sent by other means.
   An affirmative statement that a copy of the pleading has been sent to all parties and the hearing officer is sufficient to indicate compliance with this rule.
5. Discovery methods will be limited to those specified in the APA, Texas Government Code, Chapter 2001, and may be further limited by order of the hearing officer.
6. Upon a party’s request to the hearing officer, the hearing officer may issue subpoenas and commissions to take depositions under the APA. Subpoenas and commissions to take depositions shall be issued in the name of the TEA.

7. On or before the Disclosure Deadline (which must be at least 5 business days prior to a scheduled due process hearing), each party must disclose and provide to all other parties and the hearing officer copies of all evidence (including, without limitation, all evaluations completed by the date and recommendations based on those evaluations) which the party intends to use at the hearing. An index of the documents disclosed must be included with and accompany the documents. Each party must also include with the documents disclosed a list of all witnesses (including their names, addresses, phone numbers, and professions) which the party anticipates calling to testify at the hearing.

8. A party may request a dismissal or nonsuit of a due process hearing to the same extent that a plaintiff may dismiss or nonsuit a case under Texas Rules of Civil Procedure, Rules 162. However, if a party requests a dismissal or nonsuit of a due process hearing after the Disclosure Deadline has passed and, at any time within one year thereafter requests a subsequent due process hearing involving the same or substantially similar issues as those alleged in the hearing which was dismissed or nonsuited, then, absent good cause or unless the parties agree otherwise, the Disclosure Deadline for the subsequent due process hearing shall be the same date as was established for the hearing that was dismissed or nonsuited.

**Hearing** (TAC §89.1185)

1. The hearing officer will afford the parties an opportunity for hearing after reasonable notice of not less than ten days, unless the parties agree otherwise.
2. Each hearing will be conducted at a time and place that are reasonably convenient to the parents and student involved.
3. All persons in attendance will comport themselves with the same dignity, courtesy, and respect required by the district courts of the State of Texas. All argument will be made to the hearing officer alone.
4. Except as modified or limited by the provisions of §300.507-514, §300.521 or 300.528, or the provision of §89.1151-1191 of Subchapter AA, the Texas Rules of Civil Procedure shall govern the proceedings at the hearing and the Texas Rules of Evidence shall govern evidentiary issues.
5. Before a document may be offered or admitted into evidence, the document must be identified as an exhibit of the party offering the document. All pages within the exhibit must be numbered, and all personally identifiable information must be redacted from the exhibit.
6. The hearing officer may set reasonable time limits for presenting evidence at the hearing.
7. The hearing officer, at his or her discretion, may permit testimony to be received by telephone.
8. Granting of a motion to exclude witnesses from the hearing room will be at the hearing officer’s discretion.
9. Hearings will be closed to the public, unless the parent or eligible student requests that the hearing be open.
10. The hearing will be recorded and transcribed by a reporter, who will immediately prepare and transmit a transcript of the evidence to the hearing officer with copies to the parties. The hearing officer will instruct the reporter and the parties to delete all personally identifiable information from the transcription of the hearing.
11. Filing of post-hearing briefs will be permitted only upon order of the hearing officer and only upon a finding by the hearing officer that the legal issues involved in the hearing are novel or unsettled in the State of Texas or the Fifth Circuit. Any post-hearing briefs permitted by the hearing officer shall be limited to the legal issues specified by the hearing officer.
12. The hearing officer will issue a final decision, signed and dated, no later than 45 days after a request for hearing received by the TEA, unless the deadline for a final decision has been extended by the hearing officer as provided in the section # 17 below.

13. A final decision must be in writing and must include findings of fact and conclusions of law separately stated. Findings of fact must be based exclusively on the evidence presented at the hearing.

14. The final decision will be mailed to each party by the hearing officer. The hearing officer, at his or her discretion, may render his or her decision following the conclusion of the hearing, to be followed by written findings of fact and written decision.

15. At the request of either party, the hearing officer shall include, in the final decision, specific findings of fact regarding the following issues:
   (a) whether the parent or the school unreasonably protracted the final resolution of the issues in controversy in the hearing; and
   (b) if the parent was represented by an attorney, whether the parent’s attorney provided the school the appropriate information in the due process complaint in accordance with §300.507(c).

16. In making a finding regarding the issue described in 15.a. above, the hearing officer shall consider the extent to which each party had notice of, or the opportunity to resolve, the issues presented at the due process hearing prior to the date on which the due process hearing was requested. If, after the date on which a request for a hearing is filed, either the parent or the school requests that a meeting of the ARD committee of the student be convened to discuss the issues raised in the request for a hearing, the hearing officer shall also consider the extent to which each party participated in the ARD committee meeting in a good faith attempt to resolve the issue(s) in dispute prior to proceeding to a hearing.

17. A hearing officer may grant extensions of time for good cause beyond the 45 day period specified in #12, at the request of either party. Any such extension shall be granted to a specific date and shall be stated in writing by the hearing officer to each of the parties.

18. The decision issued by the hearing officer is final, except that any party aggrieved by the findings and decision made by the hearing officer, or the performance thereof by any other party, may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the US. A civil action brought in state or federal court must be initiated no more than 90 days after the date the hearing officer issued his or her written decision in the due process hearing.

19. In accordance with §300.514(c), LISD shall implement any decision of the hearing officer that is, at least in part, adverse to the school in a timely manner within ten school days after the date the decision was rendered. The LISD must provide the services ordered by the hearing officer, but may withhold reimbursement during the pendency of appeals.

Special Rule for Expedited Due Process Hearings §89.1191
An expedited due process hearing requested by a party under §300.528 shall be governed by the same rules as are applicable to due process hearings generally, except that the final decision of the hearing officer must be issued and mailed to each of the parties no later that 45 days after the date the request for the expedited hearing is received by the TEA, without exceptions or extensions.

Attorney’s Fees §300.513
1. In any action or proceeding brought under the ACT, the court, in its discretion, may award reasonable attorneys’ fees as part of the costs to the parents of a student with a disability who is the prevailing party under section 615 (l)(3) of the Act.

2. IDEA funds may not be used to pay attorney’s fees. However, Part B funds may be used to pay for costs of the hearing such as the place/location for the hearing.
3. The LISD will strive to work with parents using local district complaint process and/or the mediation process to resolve disputes.

XIII  STUDENT’S STATUS DURING PROCEEDINGS  (34 CFR §300.514)

1. During the pendency of any administrative or judicial proceeding regarding a complaint, unless the State, LISD, and parents agree otherwise, the student involved in the complaint must remain in his or her current educational placement. This does not apply during parental appeals.

2. If the complaint involves an application for initial admission to LISD, the student, with the consent of the parents, must be placed in the LISD until the completion of all the proceedings.

3. If the decision of a hearing officer in a due process hearing or a review official in an administrative appeal agrees with the student’s parents that a change of placement is appropriate, that placement must be treated as an agreement between the State or LISD and the parents for purposes of paragraph #1. above.
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ADMINISTRATION

I. **SCOPE AND APPLICABILITY OF SPECIAL EDUCATION** (34CFR §300.1 and TAC §89.1001)

Special education services shall be provided to eligible students in accordance with all applicable federal law and regulations, state statutes, rules of the State Board of Education (SBOE) and commission of education, and the State Plan under Part B of the Individuals with Disabilities Education Act (IDEA).

**Age Ranges for Student Eligibility** (TAC §89.1035)

Services will be available to all eligible students ages 3-21. Services will be made available to eligible students on their third birthday. A free appropriate public education will be available from birth to students with visual or auditory impairments in accordance with the Texas Education Code. Graduation with a regular high school diploma pursuant to TAC §89.1070 terminates a student’s eligibility to receive services. An eligible student receiving special education services who is 21 years of age on September 1 of a school year shall be eligible for services through the end of that school year or until graduation with a regular high school diploma pursuant to TAC §89.1070, whichever comes first. (see also Graduation, ARD/IEP section)

We will provide assistance to parents of developmentally delayed infants and toddlers in contacting and receiving early intervention services. Our goal is to provide full educational opportunity to all children with disabilities aged birth through 21 as described above. Our timetable for accomplishing this goal is detailed below.

**Referral**

Each referral coming to the individual district campus or the special education office will be processed pursuant to state and federal law, services shall be available to all eligible students residing within the LISD. Referrals may come from doctors, nurses, parents, teachers, and other interested individuals. Child Find efforts including contact with private, parochial and home schools (if applicable) is documented.

**Process**

When the campus committee recommends a student be referred to special education parents are notified; explained of their rights; parental consent for evaluation obtained; evaluation completed and an Admission, Review and Dismissal (ARD) / Individual Education Program (IEP) Committee meeting is scheduled. The ARD/IEP committee has the responsibility for determining eligibility and educational need, developing an individual educational program (IEP), evaluating the appropriateness of the program, and making changes where necessary.

**Services**

A continuum of placements is available to meet the needs of students with disabilities. When appropriate, students receiving special education will remain in the general education program with special education support services, supplementary aids and/or other special arrangements, if needed. LISD will ensure the provision of educational and related services to eligible students in the least restrictive environment. Students with disabilities shall have the opportunity to participate in educational programs and activities with non-disabled students whenever appropriate. The instructional day for students with disabilities will be commensurate with that of non-disabled students. Any variation will be determined by the ARD. The curriculum shall enable each student with disabilities to acquire knowledge and skills in the basic areas of learning commensurate with his or her needs and abilities.
**Parent Involvement**

The LISD provides the opportunity for parent participation during the Child Centered Educational process. During each step from referral, evaluation, and the ARD/IEP, the parent's involvement is invaluable. In addition, the LISD provides a parent forum a minimum of one time per school year in which topics of interest are offered as well as an opportunity for questions and answers and input to the administration of the LISD.

**Development of the Application for Federal IDEA Funds**

Prior to the development of the application for Federal IDEA funds, LISD shall contact all ICF’s, private/nonpublic schools within its boundaries and offer an opportunity for input in the development of the application. All private/nonpublic schools are made aware of the services offered to students with disabilities annually.

**II. CHILD FIND IDENTIFICATION** (34 CFR §300.125, §300.451)

The member schools of the Lexington Independent School District offer a comprehensive system of “Child Find” in which all individuals birth through 21 who may or may not be in school and who fall within our jurisdiction, regardless of the severity of the disability, will be located, identified, and evaluated. Requirements apply to highly mobile children with disabilities (such as migrant and homeless) and children who are suspected of being a child with a disability and in need of special education, even though they are advancing from grade to grade. Efforts include contact with private, parochial, home schools and nursing homes (if applicable). Child find activities will be comparable to activities undertaken for children with disabilities in our public schools. Lexington Independent School District will consult with appropriate private school representatives on how to carry out such activities. The following are a few of the activities/responsibilities which address our system of child identification:

* Provide public awareness to inform citizens of educational opportunities available to individuals with disabilities and maintains documentation of such activities;
* Maintain a list of our dissemination network including community agencies and facilities, individuals and locations that receive “Child Find” information;
* Disseminate information regarding availability of services;
* Track individuals with disabilities within the age range who may or may not be currently enrolled in an infant, early childhood, public, or private educational setting, to ensure the delivery of services;
* Determine which individuals are currently receiving needed special education and related services and which individuals are not currently receiving needed services;
* LISD assures confidentiality requirements are met in the collection and use of data;
* Maintains the 60 calendar day time frame referrals to evaluation report set forth in TEC;
* The referral, full and individual evaluation, and ARD/IEP placement process adheres to all state and federal requirements.

**FULL EDUCATIONAL OPPORTUNITY GOAL; TIMETABLE** (34 CFR §300.304)

The LISD currently provides equal educational opportunities to all students, including students with disabilities, within its jurisdiction or geographical boundaries pursuant to the provisions of the TEC and federal law. The current general education curriculum, Texas Essential Knowledge and Skills (TEKS), is the foundation to begin planning to meet the special identified needs of the individual student with disabilities. A continuum of alternative placements could be discussed to meet the LRE requirements. (34 CFR §300.12)

**FAPE - Free Appropriate Public Education** (34 CFR §300.13, §300.300)

FAPE is available to all children with disabilities, aged 3 through 21, residing in the LISD, including children with disabilities who have been suspended or expelled from school. The
services provided to the child address all of the child’s identified special education and related service needs. The services and placement needed by each child with a disability to receive FAPE must be based on the child’s unique needs and not on the child’s disability. The term means special education and related services that:

1. are provided at public expense, under public supervision and direction, and without charge,
2. meet the standards of the state and federal law,
3. include preschool, elementary school, or secondary school education, and
4. are provided in conformity with an IEP that meets the federal and state requirements.
5. more information on FAPE is found in (34 CFR §300.300)
6. exceptions to FAPE (34 CFR §300.122):
   a. include age 3 - 5 and 18-21 to the extent it would be inconsistent with state law.
   b. students age 18-21 to the extent state law does not require services be provided to students who, in the last educational placement prior to their incarceration in an adult correctional facility were:
      1. were not actually identified as being a student with a disability
      2. did not have an IEP under Part B.
   c. students who have graduated from high school with a regular high school diploma.
   d. the state must have on file any documentation to such exceptions.

III. OFFICE OF SPECIAL EDUCATION PROGRAMS (OSEP)

During the week of May 6-10, 2002, the Office of Special Education Programs (OSEP) were in the State as part of the on-site monitoring phase of the Continuous Improvement Monitoring Process (CIMP). On March 10, 2003, OSEP sent TEA the OSEP Monitoring Report including findings from the 2002 visit. The report includes areas of noncompliance, strengths, and suggested areas of improvement for IDEA-B (ages 3-21) and IDEA-C (ages 0-3) programs in the state of Texas.

State response:
Texas developed an improvement plan under the Continuous Improvement Monitoring Process and follows the four mandates from IDEA. The Texas Improvement Plan submitted to OSEP can be viewed on the TEA website:
www.tea.state.tx.us/special.ed/cipm/report.html

IV. SPECIAL EDUCATION DEFINED (34 CFR §300.26)

A. Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a student with a disability, including: instruction conducted in the classroom, in the home, in hospitals, in institutions, and in other settings; and instruction in physical education.
   1. At no cost means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the general education program.
   2. Physical education is defined as follows:
    a. development of physical and motor fitness;
    b. development of fundamental motor skills and patterns;
    c. development of skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and
    d. includes special physical education, adaptive physical education, movement education, and motor development.
   3. Specially designed instruction means adapting as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction to:
a. address the unique needs of the student that result from the student’s disability, and
b. ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the district that apply to all children.

*   Regarding specially designed instruction, the ARD/IEP committee will determine if the methodology is indeed a mode of instruction which would be the basis for goals and objectives and in such case should be listed in the IEP or if the method of instruction is specific day to day adjustments in instructional methods which are not a basis for goals.

B. The term special education includes speech pathology, or related services if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a student with a disability.

C. The term special education also includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a student with a disability.

1. Vocational education means organized educational programs offering a sequence of courses that are directly related to the preparation of individuals in paid or unpaid employment in current or emerging occupations or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

2. Such programs shall include competency-based applied learning that contributes to an individual’s academic knowledge, higher-order reasoning, and problem-solving skills, work attitudes, general employability skills, and the occupation-specific skills necessary for economic independence as a productive and contributing member of society.

D. The term special education also includes travel training as described in 34 CFR 300.26.

V. PERSONNEL

A. Comprehensive System of Personnel Development (34CFR 300.135, and §300.221) (see also District Policy)

1. The TEA has in effect a comprehensive system of personnel development (CSPD) that is designed to ensure an adequate supply of qualified teachers and related service personnel. The LISD must have on file with TEA information to demonstrate that all personnel necessary to carry out Part B of the Act are adequately prepared. To the extent LISD determines appropriate, we shall contribute to and use the CSPD developed by TEA.

2. House Bill 1024, summer 2003, states that staff development is to be conducted in accordance with LISD local district standards to improve student performance.

B. Definition of "Highly Qualified" Teacher under NCLB, Title IX, Section 9101

The term ‘highly qualified’ -

1. when used with respect to any public elementary school or secondary school teacher teaching in Texas, means that-

a. the teacher has obtained full State certification as a teacher (including certification obtained through alternative routes to certification) or passed the State teacher licensing examination, and holds a license to teach in such State, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State’s public charter school law; and

b. the teacher has not had certification or licensure requirements waived on an emergency, temporary, or provisional basis;

2. when used with respect to-

a. an elementary school teacher who is new to the profession, means that the teacher-

(i) holds at least a bachelor's degree; and
(ii) has demonstrated, by passing a rigorous State test, subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary school curriculum (which may consist of passing a State-required certification or licensing test or tests in reading, writing, mathematics, and other areas of the basic elementary school curriculum); or

b. a middle or secondary school teacher who is new to the profession, means that the teacher holds at least a bachelor's degree and has demonstrated a high level of competency in each of the academic subjects in which the teacher teaches by-

(i) passing a rigorous State academic subject test in each of the academic subjects in which the teacher teaches (which may consist of a passing level of performance on a State-required certification or licensing test or tests in each of the academic subjects in which the teacher teaches); or

(ii) successful completion, in each of the academic subjects in which the teacher teaches, of an academic major, a graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing; and

3. when used with respect to an elementary, middle, or secondary school teacher who is not new to the profession, means that the teacher holds at least a bachelor's degree and-

a. has met the applicable standard in clause (i) or (ii) of subparagraph (B), which includes an option for a test; or

b. demonstrates competence in all the academic subjects in which the teacher teaches based on a high objective uniform State standard of evaluation that-

(i) is set by the State for both grade appropriate academic subject matter knowledge and teaching skills;

(ii) is aligned with challenging State academic content and student academic achievement standards and developed in consultation with core content specialists, teachers, principals, and school administrators;

(iii) provides objective, coherent information about the teacher's attainment of core content knowledge in the academic subjects in which a teacher teaches;

(iv) is applied uniformly to all teachers in the same academic subject and the same grade level throughout the State;

(v) takes into consideration, but not be based primarily on, the time the teacher has been teaching in the academic subject;

(vi) is made available to the public upon request; and

(vii) may involve multiple, objective measures of teacher competency.

C. Qualifications of Special Education Personnel (34 CFR §300.136)

The term “qualified” means that a person has met the Texas Education Agency approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which he or she is providing special education or related services. For teachers who currently are not certified or licensed for their assignment, there is documentation that required actions for certification/licensure are being taken.

Special Education Personnel (TAC §89.1131)
All special education personnel shall be certified, endorsed, or licensed in the area or areas of assignment in accordance with 34 CFR §300.21, §300.136; the TEC §21.002, §21.003, and §29.304; or appropriate state agency credentials.

If a staff member does not have the skills and knowledge needed for the assignment, LISD shall make provisions for the person to acquire the necessary skills and knowledge.

Special education personnel may be employed on a full-time or part-time basis. Teachers who hold a special education certificate or endorsement may be assigned to any level of a basic special education instructional program serving eligible students between the ages of three and twenty-one in accordance with limitations of their certificate, except for the following:

1. Persons assigned to provide speech therapy instructional services must hold a valid Texas Education Agency certificate in speech and hearing therapy or speech and language therapy, or a valid state license as a speech/language pathologist.
2. Teachers holding only a special education endorsement for early childhood education for students with disabilities shall be assigned only to programs serving infants through grade six.
3. Teachers assigned full-time to teaching students who have an orthopedic impairment or other health impaired, with the teaching station in the home or hospital, shall not be required to hold a special education certificate or endorsement as long as the personnel file contains an official transcript indicating that the teacher has completed a three-semester-hour survey course in the education of the students with disabilities and three semester hours directly related to teaching students with physical impairments or other health impairments.
4. Teachers certified in the education of students with visual impairments must be available to students with visual impairments including deaf-blindness through one of the school district’s instructional options, a shared service arrangement with other districts or the education service center. These teachers must attend ARD/IEP committee or Individualized Family Service Plan (IFSP) meetings of a student, birth through 21 years of age, with a visual impairment, including deaf-blindness.
5. Teachers certified in the education of students with auditory impairments, must be available to students with auditory impairments, including deaf-blindness, through one of the school district’s instructional options, a Regional Day School Program for the Deaf, a shared service arrangement with other school districts or the education service center. A teacher certified in the education of students with auditory impairments, must attend ARD/IEP committee and IFSP meeting of a student with an auditory impairment, including deaf-blindness.
6. Physical education for the students with disabilities is provided, when needed.  
   a. When the ARD/IEP committee has made the determination and the arrangements are specified in the student’s IEP, physical education for students with disabilities may be provided by the following personnel:
      (1) special education instructional or related service personnel who have the necessary skills and knowledge,
      (2) physical education teachers,
      (3) occupational therapists,
      (4) physical therapists, or
      (5) occupational therapy assistants or physical therapy assistants working under supervision in accordance with the standards of their profession.
   b. When physical education instruction is provided by special education personnel, LISD will document that the personnel have the necessary skills and knowledge. Documentation may include, but need not be limited to:
      (1) in-service records,
      (2) evidence of attendance at seminars or workshops, or
      (3) transcripts of college courses.
7. Teachers assigned full or part-time to instruction of students with visual impairments, including deaf-blindness shall be certified in education of students with visual impairments. Teachers assigned full or part-time to instruction of deaf students, including deaf-blindness shall be certified in education of students who are deaf and severely hard of hearing. Other certifications for serving these students shall require prior approval from the Texas Education Agency.

8. Teachers with secondary certification with the generic delivery system may be assigned to teach grades 6-12 only.

D. Paraprofessional Personnel (TAC §89.1131)

1. Paraprofessional personnel must be certified and may be assigned to work with eligible students, general and special education teachers, and related service personnel. Aides may also be assigned to assist students with special education transportation, serve as a job coach or serve in support of community-based instruction. Aides paid from state administrative funds may be assigned to the Special Education Resource System (SERS), Special Education Management System (SEMS), or other clerical or administrative duties.

Certified occupational therapy assistants, physical therapist assistants, and interpreters for the deaf may be employed as aides I, II, III, depending on the nature of the assignment.

E. Professional Personnel

1. Special education professional support personnel are those non-instructional personnel who perform one of the following functions:
   a. provide services to the special education program in support of the instructional program, related services program, and student evaluation services;
   b. provide related services or student evaluation services to eligible students with disabilities; or
   c. direct or supervise the total program.

2. Each special education teacher shall have available the services of a special education instructional supervisor, an educational diagnostician, school psychologist, and licensed specialist in school psychology. The special education director may also serve as the special education instructional supervisor if appropriately certified.

Director
The special educational director shall perform administrative managerial duties as needed to fully implement a comprehensive special education program. The administrator shall assume responsibility for coordinating all facets of the special program, including referrals of special education students to and from other agencies, in order to allow a smooth transition from one service to another. The special education director shall provide leadership in the instructional program, and may be responsible for the appraisal process.

Coordinator
The special education coordinator shall provide leadership in the instructional program and may be responsible for coordination of the appraisal process.

Counselor
The special education counselor shall provide student and parent counseling, individually and in groups, concerning problems resulting from the student’s disability. The counselor shall serve as liaison between parent, school, and community agencies. The counselor may assist in the collection and analysis of appraisal data pertaining to sociological
variables; the counselor shall coordinate special education counseling with the rest of the school guidance program.

School Psychologist
One primary function of the school psychologist is to serve on the evaluation team. The responsibilities of the school psychologist may include: conducting emotional and behavioral evaluations; participating in the development of individual educational plans; consulting with teachers, parents and community agencies concerning intervention strategies relating to learning and behavioral problems of students; and planning and managing a program of psychological services for students and parents. Also, attendance at ARD/IEP meetings may be necessary to present evaluation data from psychological evaluations and screenings.

Licensed Specialist in School Psychology (LSSP)
One primary function of the LSSP is to serve on the evaluation team. Responsibilities may include any of the activities described for the school psychologist listed above.

Educational Diagnostician
The educational diagnostician shall be responsible for full and individual evaluations of students referred for special education including the assessment of intelligence and educational functioning, and for the collection and analysis of data pertaining to sociological variables for the student. Educational diagnosticians may provide consultation to teachers, parents, other support personnel, and community agencies including, but not limited to, consultation concerning individual educational plan implementation and strategies for learning. Diagnosticians may also attend the Student Assistance Team (SAT) meetings on assigned campuses.

F. Related Services Personnel

1. The primary function of related service personnel is to implement services for students with disabilities as identified in the student's individual educational plan. Related services personnel may also perform the following functions:
   a. perform evaluations in areas for which they have appropriate training and which are listed on their job description;
   b. provide assistance to the ARD committee;
   c. contribute to the development of the IEP; and
   d. implement transdisciplinary approach in working with teachers, aides, and parents concerning IEP implementation, maintenance, and evaluation.

2. Related services personnel shall meet the following certification or licensure requirements:
   a. Audiological services shall be provided by a professional who holds certification as an audiologist by the American Speech-Language-Hearing Association.
   b. Counseling services shall be provided in the area of specialization by a professional who holds one of the following:
      (1) a valid Texas Education Agency certificate, as a counselor, visiting teacher, school psychologist, or associate psychologist;
      (2) certification by the Texas State Board of Examiners of Psychologists as a psychologist or Licensed Specialist in School Psychology;
      (3) licensure by the State Board of Examiners of Professional Counselors; or
      (4) a master's degree in social work from a recognized institution of higher education;
(5. licensure as a certified social worker.

c. **Interpreting services** for the deaf shall be provided by an interpreter who is certified in the appropriate language mode(s), if certification in such mode(s) is available. If certification is available, the interpreter must be certified by the Registry of Interpreters for the Deaf (RID) or the Texas Commission for the Deaf and Hard of Hearing (TCDHH) unless the interpreter has been granted an emergency permit from the commissioner of education to provide interpreting services to students who are deaf. The commissioner shall consider applications for the issuance of an emergency permit to provide interpreting services on a case-by-case basis in accordance with requirements in §300.136 and standards and procedures established by the TEA. In no event will an emergency permit allow an uncertified interpreter to provide interpreting services for more than a total of three school years to students who are deaf.

d. **Medical diagnostic services** shall be provided by a licensed physician.

e. **Occupational therapy** shall be provided by a professional who is licensed by the Texas Board of Occupational Therapy Examiners. A licensed occupational therapy assistant may provide occupational therapy services under the supervision of a licensed occupational therapist in accordance with the standards of the profession. Occupational therapists may serve as appraisal and consultant staff only to special education and regular education teachers who have students who have been diagnosed by an educational diagnostician to have a severe written expression (handwriting) disability. In the case of physical therapy and occupational therapy, services for students shall be prescribed by a physician.

f. **Orientation and mobility instruction** must be provided by a certified orientation and mobility specialist (COMS) who is certified by the Academy for Certification of Vision Rehabilitation and Educational Professionals.

g. **Physical therapy** shall be provided by a professional who holds a license by the Texas Board of Physical Therapy Examiners. A physical therapy assistant (LPTA) may provide physical therapy services under the supervision of a licensed physical therapist (LPT) in accordance with the standards of the profession. In the case of physical therapy and occupational therapy, services for students shall be prescribed by a physician.

h. **Psychological services** shall be provided by a professional who holds a certificate from the Texas State Board of Examiners of Psychologists as a psychologist or Licensed Specialist in School Psychology or a Texas Education Agency certificate as a school psychologist or an Licensed Specialist in School Psychology.

i. **Recreation therapy** shall be provided by a professional who holds a degree in therapeutic recreation and is certified by the National Council on Therapeutic Recreation Certification.

j. **School health service** shall be provided or supervised by a licensed physician or by a registered nurse (RN) with or without a bachelor’s degree.

k. **Social work services** shall be provided by one of the following:

   (1. a professional who holds a master’s degree in social work from a recognized institution of higher learning;

   (2. a professional who holds a bachelor’s degree in an appropriate field from a recognized institution of higher learning and who is supervised by a social worker with a master’s degree (MSSW);

   (3. a professional counselor licensed by the State Board of Examiners of Professional Counselors; or

   (4. a Texas Education Agency certified school psychologist, Licensed Specialist in School Psychology, visiting teacher, or counselor.
l. Rehabilitation counseling shall be provided by a professional qualified to provide individual or group sessions that focus on career development, employment preparation, achieving independence and integration in the work place and community of a student with disabilities, plus rehabilitation services found under the Rehabilitation Act of 1973, as amended.

m. Other related services may be provided with written approval by the Texas Education Agency.

VI. CURRICULUM FOR STUDENTS WITH DISABILITIES [see District Policy]

The school district has the responsibility for providing educational and related services to eligible students in the least restrictive environment. Students with disabilities shall have the opportunity to participate in educational programs and activities with non-disabled students to the maximum extent appropriate.

The school district curriculum shall enable each student to acquire knowledge and skills in the basic areas of learning commensurate with the student's needs and abilities. These skills may be attained in the general program of instruction or in a program of special education instruction, as determined by the Admission, Review, and Dismissal committee.

All students, regardless of special need or condition, shall be provided a well-balanced curriculum. The TEKS represent core knowledge, skills, and competencies all students should learn to be effective and productive members of society. Students with special needs shall be instructed in those same TEKS in a manner appropriate to their needs. The TEKS constitute a sound developmental sequence of instruction and their mastery should be the goal for all students, including students with disabilities. Although some students with disabilities will have different learning rates or different levels of mastery, the school district must provide each student with disabilities the opportunity to make satisfactory progress in the essential elements in a manner appropriate to the student's needs. If a student’s disability is such that mastery of some or all of the TEKS is inappropriate for that student, the ARD/IEP committee has the responsibility to develop an appropriate scope and sequence of skills for that student and to modify the method of instruction, pacing, and/or materials, as appropriate, to provide full opportunity for learning the TEKS.

Identified special education students shall follow the general education curriculum, consisting of the essential elements, when deemed appropriate by the ARD/IEP committee and reflected in the IEP.

Identified special education students shall follow the general education curriculum with modification and/or special education support when deemed appropriate by the ARD/IEP committee and reflected in the IEP. Each identified special education student shall follow the IEP developed and approved by the ARD/IEP committee.

Tutorials - Students in special education programs shall be eligible for tutorial services, but the tutorials shall not replace other special services provided for the student.

Textbooks - State-adopted textbooks are available for identified students with disabilities’ use, regardless of placement. State-adopted textbooks may be requested by the teacher of the student with disabilities, following local building procedures. Local district guidelines will be followed when textbooks are issued to identified students with disabilities. Students are responsible for the proper handling and return of a state-adopted textbook, which has been issued to the student. Consequences for improper use or return of a textbook will comply with local district procedures for all students.

A special education teacher may request teacher’s manuals and other supplementary aids for state-adopted textbooks used by the identified students with disabilities assigned to the
special education teacher. Local procedures for textbook acquisition will be followed in requesting teacher’s manuals and aids.

Textbooks on Tape - The LISD makes available certain state-adopted textbooks and selected other books on tape for students with disabilities based on ARD/IEP committee recommendation.

Original sets of tapes are maintained in Content Mastery Centers.

VII. STUDENT EDUCATION MANAGEMENT SYSTEM

The LISD utilizes a computer information system to provide an efficient method of collecting and generating the student data necessary for special education program management. This comprehensive system provides a data bank of student-related information which is used to generate required state and federal reports and to provide other administrative information critical to program planning and management.

VIII. OVER-REPRESENTATION: IDENTIFICATION / LRE

A. The LISD will address potential over-representation issues when there is a significant difference identified by TEA between the targeted ethnic group percentages in general and special education. Supporting documentation will include:
   1. A thorough evaluation of the ethnic composition who receive special education services describing initiatives and / or actions related to appropriate screening and referral processes, nondiscriminatory evaluations.
   2. A plan in response to the evaluation that targets the area of improvement.

B. The LISD will address potential over-representation issues when there is a significant difference identified by TEA between the students who are economically disadvantaged in general and special education. Supporting documentation will include:
   1. A thorough evaluation of the economically disadvantaged population who receive special education services describing initiatives and / or actions related to appropriate screening and referral processes, nondiscriminatory evaluations.
   2. A plan in response to the evaluation that targets the area of improvement.

C. The LISD will address potential over-representation issues when there is a significant difference identified by TEA between the students classified as limited English proficient (LEP) who receive special education services and the district’s LEP composition. Supporting documentation will include:
   1. A thorough evaluation of the limited English proficient population who receive special education services describing initiatives and / or actions related to appropriate screening and referral processes, nondiscriminatory evaluations.
   2. A plan in response to the evaluation that targets the area of improvement.

D. The LISD will address potential over-representation issues when there is a significant difference identified by TEA between the ratio of full-time equivalent students placed in partially or totally self contained classrooms to the number of full-time equivalent students placed in resource room or mainstream instructional arrangements. If the ratio is greater than 25 percent above the state average for two consecutive years supporting documentation will include:
   1. A thorough evaluation of the special education program.
   2. A plan for staff development and capacity building in response to the program evaluation that targets promoting the appropriate placement of students with disabilities in integrated settings.
Note (DEC): The TEC §42.151(j) states that a school district that maintains for two successive years a ratio of full-time equivalent students placed in partially or totally self-contained classrooms to the number of full-time equivalent students placed in resource room or mainstream instructional arrangements that is 25 percent higher than the statewide average ratio shall be reviewed by the agency to determine the appropriateness of student placement. The above statement in TEC §42.151(j) was amended by House Bill 1441, summer 2003, to delete the review process. A list will continue to be disseminated and a system put in place to intervene regarding the districts LRE data.

IX. DISTRICT EFFECTIVENESS AND COMPLIANCE (DEC) REVIEW

The following will be reviewed during monitoring visits by the TEA. PEIMS and other district data will be used to locally monitor this information on a regular basis to monitor any overrepresentation in the following areas:

A. the composition of ethnic groups receiving special education services,
B. percentage of students who are economically disadvantaged and receive special education services reflect student enrollment economic patterns, and
C. percentage of students classified as limited English proficient (LEP) who receive special education services reflect the LEP composition.

X. TAAS/TAKS, SDAA, and LDA

For specific details, please see the ARD/IEP Section.

House Bill 447, passed summer 2003 by the 78th Texas Legislature, adds to the AEIS the percentage of special education students assessed through the SDAA. Also added will be circumstances under which the commissioner will authorize a special accreditation investigation when excessive numbers of students in special education are assessed through the SDAA. Excessive numbers is yet to be determined by the TEA.

XI. COLLABORATION WITH AGENCIES REGARDING MEMORANDUM OF UNDERSTANDINGS (MOU)

The TEA has worked collaboratively with several agencies to develop memorandum of understandings (MOU) or agreement memorandum (AM) that will assist in the coordination with the numerous state agencies in providing services to students with disabilities. The LISD will abide by the requirements of each memorandum including:

A. coordination between ECI, Regional Day School Program for the Deaf (RDSPD), and the LISD (signed spring '99)
B. interagency coordination of transition services to students with disabilities (coordination between TCB, TDHS, TDMHMR, TEA, TEC, TRC, and TDPRS)
C. interagency coordination of special education services to students with disabilities in residential care facilities (coordination between TEA, TDHS, TDMHMR, TDH, TDPRS, ECI, TCADA, TJPC, and TYC. - directed by 73rd Texas Legislature, 1993)
E. MOU defining responsibilities to children who are medically, fragile (coordination between TEA, TCB, TDH, TDHS, TDMHMR, TDPRS, and ECI.)

XII. TRANSFER OF ASSISTIVE TECHNOLOGY DEVICES (SBOE §89.1056)
Unless otherwise specifically defined in this section, the terms used in this section shall have the meanings ascribed to such terms in TEC §30.0015. A transfer (sell, lease or loan) of an assistive technology device ATD shall be in accordance with a transfer agreement which incorporates the standards in TEC and which includes, specifically, the following.

A. The transferor and transferee must represent and agree that the terms of the transfer are based on the fair market value of the ATD, determined in accordance with generally accepted accounting principals.

B. The informed consent of the parent of the student with a disability for whom the ATD is being transferred must be obtained before the transfer of an ATD. The procedures employed by LISD in obtaining informed consent shall be consistent with the procedures employed by LISD to obtain parental consent under §300.505 outlined in section 700 of this document. If the student has the legal capacity to enter into a contract, the informed consent may be obtained from the student. Informed parental or adult student consent need not be obtained if the LISD can demonstrate that it has taken reasonable measures to obtain that consent, and the parent or adult student has failed to respond. To meet the reasonable measures requirement, the LISD must use guidelines consistent with those described in §300.345 (found in section 400 of this document).

C. If the transfer is a sale, the sale of the ATD shall be evidenced by a “Uniform Transfer Agreement” (UTA) which includes the following:
   1. the names of the transferor and the transferee (which may be any individual or entity described in TEC §30.0015.
   2. the date of the transfer,
   3. a description of the ATD being transferred,
   4. the terms of the transfer (including the transfer of warranties, to the extent applicable); and
   5. the signatures of authorized representatives of both the transferor and the transferee.

The TEA shall annually disseminate to school districts the standards for a school district transfer of an ATD.

Nothing in this section shall:
   ♦ alter any existing obligation under federal or state law to provide ATD’s to students with disabilities
   ♦ require LISD to transfer an ATD to any person or entity,
   ♦ limit LISD’s right to sell, lease, loan, or otherwise convey or dispose of property as authorized by federal or state laws, rules, or regulations, or
   ♦ authorize any transfer of an ATD that is inconsistent with any restriction on transferability imposed by the manufacturer or developer of the ATD or applicable federal or state laws, rules, or regulations.

XIII. FUNDING (TAC §89.1121)

A. Distribution of State Funds

Procedures for counting the average daily attendance of students receiving special education services in various instructional settings shall be developed by the commissioner of education and included in the daily register for pupil attendance accounting.

State special education funds will be distributed to school districts on the basis of average daily attendance of full-time equivalents of eligible students served in accordance with Section 129.61 of the SBOE Rules (relating to Requirements for Student Attendance Accounting for State Funding Purposes).
The special education attendance will be converted to contact hours by instructional arrangement and then to full-time equivalents. The full-time equivalent for each instructional arrangement is multiplied by the school district's adjusted basic allotment and then multiplied by the weight for the instructional arrangement as prescribed in the Texas Education Code §42.151(a). Contact hours for any one student in special education may not exceed six hours a day or 30 hours a week for funding purposes. The total contact hours generated per week will be divided by 30 to determine the full-time equivalents. Special education full-time equivalents generated will be deducted from the school district's average daily attendance for purposes of the general education allotment.

The receipt of special education funds shall be contingent upon the operation of an approved comprehensive special education program in accordance with state and federal laws and regulations. The district may not divert special education funds for other purposes with the exception of administrative costs as defined in Chapter 105, Subchapter B. (relating to Maximum Indirect Cost Allowable on Certain Foundation School Program Allotments). Funds generated by full-time equivalents in one instructional arrangement may be spent on the overall special education program and are not limited to the instructional arrangement which generated the funds. The district will maintain separate accountability for the total state special education program fund within the general fund.

A special education fund balance may be carried over to the next fiscal year but must be expended on the special education program in the subsequent year. State special education carryover funds must be used in the special education program and cannot be used for administrative costs.

Students who have reached their third birthday and are younger than 22 years of age on September 1 of the current school year who participate in the Regional Day School Program for the Deaf may be counted as part of the district's ADA if they receive instruction from the basic program for at least 50% of the school day.

Students from birth through age two who have visual impairments or auditory impairments or both and are served by LISD shall be enrolled on the district home or Regional Day School campus and shall be considered as eligible for ADA on the same basis as other students in special education.

B. Allowable Expenditures with State Special Education Funds (TAC §89.1125)

1. Personnel
   a. Persons paid from special education funds shall be assigned to instructional or other duties in the special education program and/or to provide support services to the general education program in order for students with disabilities to be included in the regular program. Support services shall include, but not be limited to, collaborative planning, co-teaching, small group instruction with special and general education students, direct instruction to special education students, or other support services determined necessary by the admission, review, and dismissal committee for an appropriate program for the student with disabilities. Assignments may include duties supportive to school operations equivalent to those assigned to general education personnel.
   b. Personnel assigned to provide support services to the general education program as stated above may be fully funded from special education funds.
   c. If personnel are assigned to special education on less than a full-time basis, except as stated above, only that portion of time in which the personnel are
assigned to students with disabilities shall be paid from state special education funds.

2. Materials, Supplies, and Equipment
   a. State special education funds may be used for special materials, supplies, and equipment which are directly related to the development and implementation of individual educational programs of students with special needs and which are not ordinarily purchased for the general classroom.
   b. Office and routine classroom supplies are not allowable.
   c. Special equipment may include instructional and assistive technology devices, audiovisual equipment, computers for instruction or evaluation purposes, and evaluation equipment only if used directly with students.

3. Contracted Services
   State special education funds may be used to contract for consultants to provide staff development, program planning and program evaluation and instructional services, and evaluations and related services to students with disabilities.

   When such funds are used to contract with a consultant, the district shall:
   a. document the amount paid;
   b. document that the consultant had the appropriate credentials;
   c. maintain a record of service performed, the purpose of the service, and to whom the service was provided;
   d. maintain a written contract or agreement and evidence that a contract or agreement was signed prior to the service being offered and that the terms were carried out before payment was made;
   e. document that the services could not have been provided by an employee within the district;
   f. pay the consultant a fee rather than a salary;
   g. document that there was no conflict of interest in hiring the consultant;
   h. document that any travel expenses paid the consultant did not exceed state rates and allowances.

4. Transportation
   Special Education state funds may be used for transportation only to and from residential placements. Prior to using federal funds for transportation costs to and from a residential facility, LISD must use state or local funds based on actual expenses up to the state transportation maximum for private transportation contracts.

5. Travel
   Special education funds may be used to pay special education staff travel to perform services directly related to the education of students with disabilities. Funds may also be used to pay travel of staff (including administrators, general education teachers, and special education and related services personnel) to attend staff development meetings for the purpose of improving performance in assigned positions directly related to the education of students with disabilities. In no event shall the purpose for attending such staff development meetings include time spent in performing functions relating to the operation of professional organizations. In accordance with 34 CFR §300.382(j), funds may also be used to pay for the joint training of parents and special education, related services, and general education personnel.
   a. Staff shall be reimbursed in accordance with local district policies concerning in-district or out-of-district travel.
   b. Reimbursement paid from state or federal special education funds shall not exceed those rates established in the current regulations for travel for state employees. (If the district reimbursement rates exceed the state rates, the difference must be paid from local funds.)
   c. Records shall be kept by the local district documenting mileage, destination, and the purpose of all travel paid from funds under this section.
6. Administrative Cost
There is documentation that 85 percent of the state special education block grant for the previous year was budgeted/expended for the direct costs of the special education program. No more than 15% of each school district’s Foundation School Program special allotments under the Texas Education Code, Chapter 42, Subchapter C, may be expended for indirect costs. See Texas Register §105.11 for more information.

C. Federal Funds
Supplement versus Supplant Federal funds must be used to supplement and not supplant state and local special education funds. The district’s general ledger reflects expenditure of federal special education funds as approved by the TEA. Financial and Accounting Reporting Module; 19TAC §89.1125; SAS Administrator’s Guide for Special Education Programs.

D. Contracting for Services
1. Residential Care and Treatment Facilities (§29.008 and SBOE §89.61)
   Each contract for residential placement must be approved by the commissioner.
   a. School districts having a Texas Department of Human Services or Texas Department of Mental Health and Mental Retardation approved residential facility located within their boundaries must provide special education and related services to eligible students residing in the facility. If after contracting the facility to offer services to eligible students with disabilities, the LISD determines that educational services are provided through a charter school, approved non-public school, or facility operated private school, the LISD is not required to provide services. However, the LISD shall annually contact the facility to offer services to eligible students with disabilities.
   b. These facilities offer care, treatment, and habilitative services as a first priority.
2. Residential Contracts (TEC §29.008)
   a. Residential placements, if approved by the TEA (as described in Instructional Arrangements section) will be funded as follows:
      (1. Costs of an approved contract for residential placement may be paid from a combination of federal, state, and local funds. The local share of the total contract cost for each student is that portion of the local tax effort that exceeds the district’s local fund assignment, divided by the ADA in the district. If the contract involves a private facility the state share of the total contract cost is that amount remaining after subtracting the local share. If the contract involves a public facility, the state share is that amount remaining after subtracting the local share from the portion of the contract that involves the costs of instructional and related services. For purposes of this section, “local tax effort” means the total amount of money generated by taxes imposed for debt services and maintenance and operation.
      (2. When a student, including one for whom the state is managing conservator, is placed primarily for care or treatment reasons in a private residential facility that operates its own private education program, none of the costs may be paid from public education funds. If a residential placement primarily for care or treatment reasons involves a private residential facility in which the education program is provided by the school district, the portion of the costs that includes appropriate education services, as determined by the school district’s ARD, shall be paid from state and federal education funds.
   d. When a student who is on contract in one school district of residence moves to another Texas school district, and the student is to continue in the contract placement, the school district which negotiated the contract placement shall be responsible for the contract for the remainder of the school year.
e. The commissioner shall establish procedures to allocate specific state appropriated funds to school districts for the provision of noneducational community-based support services for certain students who would need to remain in or would have to be placed in private residential programs, primarily for educational reasons, without the noneducational support services. The procedures shall provide for:

   (1) allocating the funds to school districts only for those eligible students who are currently in or at risk of private residential placement primarily for educational purposes;

   (2) allowing the student to be served appropriately in the home community rather than in a private residential placement by providing in the local community noneducational services such as in-home family support, respite care, and case management;

   (3) applying for the funds consistent with the individual student private residential application process provided herein;

   (4) coordinating with other agencies and service providers to ascertain responsibility for and availability of resources for the noneducational services prior to the use of these specific funds;

   (5) approving the funds to school districts based on student and family need for noneducational services in the local community in order to return students from or to prevent private residential placement;

   (6) giving priority for funding, within funds available to those students continuing to need the noneducational services previously provided with these funds and for whom other funding is not available;

   (7) allowing school districts to contract with qualified individuals, agencies, or organizations for the provision of the necessary noneducational services; and

   (8) continuing arrangements for coordination between school districts and local units of the TDMHMR for providing noneducational community-based services for students at risk of or returning from private residential placements.

3. Expenditures for Private School Students with Disabilities (34 CFR §300.453)
   The LISD must spend on providing special education and related services to private school students with disabilities:

   a. for children aged 3 through 21, an amount that is the same proportion of the LISD’s total subgrant under sections 611(g) under the Act as the number of private school children with disabilities aged 3 through 21 residing in its jurisdiction is to the total number of students with disabilities in its jurisdiction aged 3 through 21, and

   b. for children aged 3 through 5, an amount that is the same proportion of the LISD’s total subgrant sections 619(g) under the Act as the number of private school children with disabilities aged 3 through 5 residing in its jurisdiction is to the total number of students with disabilities in its jurisdiction aged 3 through 5.

   c. the child count must be used to determine the amount that the LISD must spend on providing special education and related services to private school students with disabilities in the next subsequent fiscal year. The LISD shall:

      (1) consult with representatives of private school students in deciding how to conduct the annual count of the number of private school students with disabilities, and

      (2) ensure that the count is conducted on the date required by our State,

   d. other federal regulations regarding private school expenditures will be followed by the LISD, including §300.457 Complaints; §300.458 Separate Classes Prohibited; §300.459 Funds not Benefit a Private School; §300.460 Use of Public School Personnel; §300.461 Use of Private School Personnel; and §300.462 Property, equipment and supplies for private school students.

4. TSBVI or TSD - Other Provisions (Funding)
a. For each student enrolled in the TSBVI or TSD, the district who is responsible for providing appropriate special education services to the student, shall share the cost of the student’s education (excluding the summer programs) as provided under TEC.

(1) Each school district and state school shall submit necessary information not available to the agency in order to determine the district’s share of the student’s educational costs. The information must be submitted in a form prescribed by the commissioner within 30 calendar days of the student’s actual enrollment in the TSBVI or TSD.

(2) The agency will make deductions in the school district’s regularly scheduled foundation school program fund payments and will make payments to the TSBVI or TSD according to an established schedule.

(3) If the TEA cannot make the deductions required from the district’s foundation school program payments, the deductions shall be made from the available school fund payments to the district. A district shall indicate whether it will make a direct payment or authorize the TEA to deduct the appropriate amount from the available school fund payment.

b. LISD shall provide each parent or legal guardian of an eligible student with visual impairments or auditory impairments the following written information prior to consideration of the student’s placement for special education services:

(1) The availability of programs offered by the TSBVI or TSD for which the student may be eligible;

(2) The eligibility requirements and admission criteria for the TSBVI or TSD as applicable; and

(3) The rights of students in regard to admission to the TSBVI or TSD and in regard to appeal of admission decisions.

XIV. INTERVENTIONS AND SANCTIONS (TAC §89.1076)

The TEA has established and implemented a system of interventions and sanctions, in accordance with the Individuals with Disabilities Act (IDEA), TEC 29.010, and TEC Chapter 39, as necessary to ensure compliance with federal and state requirements regarding the implementation of special education and related services. In accordance with TEC 39.131(a), the TEA may combine any intervention and sanction. The system of interventions and sanctions will include, but not be limited to, the following:

1. on-site review for failure to meet compliance requirements;
2. required fiscal audit of specific program(S) and / or of the district, paid for by the district;
3. required submission of corrective action(s), including compensatory services, paid for by the district;
4. required technical assistance from the education service center, paid for by the district;
5. public release of compliance review findings;
6. special investigation and/or follow-up verification visits;
7. required public hearing conducted by the local school board of trustees;
8. assignment of a special purpose monitor, master, or management team, paid for by the district;
9. hearing before the commissioner of education or designee;
10. reduction in payment or withholding of funds; and/or
11. lowering of the special education compliance status and /or the accreditation rating of the district.