

Brownwood Independent School District

Operating Guidelines

The Special Education Programs in the Brownwood Independent School District operate under local district school board policies. The purpose of the Operating Guidelines manual is to clarify and support local district policy, State Board of Education and Commissioner's Rules for Special Education Services and 34 Code of Federal Regulations (Individuals with Disabilities Education Act) IDEA 2004 – Part 300 – final revised regulations dated August 14, 2006. The local district board policy may be found on the Brownwood ISD website.

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OPERATING GUIDELINE: REVIEW OF EXISTING EVALUATION DATA (REED)

CATEGORY: FULL AND INDIVIDUAL EVALUATION
FRAMEWORK: [REVIEW OF EXISTING EVALUATION DATA \(REED\)](#)

A Review of Existing Evaluation Data (REED) must be completed by the ARD committee and other qualified professionals, as appropriate. This group of qualified professionals will review:

- Previous eligibility assessments and disability reports;
- Evaluations and information provided by the parents;
- Current classroom-based, local, or State assessments, and classroom-based observations; and
- Observations by teachers and related services providers.

On the basis of the review, the ARD committee will determine:

- Whether the child is a child with a disability, and the educational needs of the child, or, in case of a reevaluation of a child, whether the child continues to have such a disability and the educational needs of the child;
- Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services;
- The present levels of academic achievement and related developmental needs of the child; and
- Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program (IEP) of the child and to participate, as appropriate, in the general education curriculum.

If no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs the ARD committee can make the determination to continue special education eligibility.

Parents retain the right to request an assessment to determine whether the child continues to be a child with a disability and to determine the child's educational needs. At this time, the parent will be presented with a *Notice of Assessment* and *Consent for Assessment*.

PERSONS RESPONSIBLE: Special Education Department Evaluation Personnel

TIMELINES: The REED will be completed prior to each three year re-evaluation or at special ARD committee request.

MATERIALS: Assessment Planning Document, Procedural Safeguards and receipt, "A Guide to the ARD Process" and receipt, Notice & Consent for Assessment, FIE Report

GUIDING PRINCIPLES

OPERATING GUIDELINE: REVIEW OF EXISTING EVALUATION DATA (REED)

"The phrase, 'qualified professionals, as appropriate' is used to provide flexibility for public agencies to include other professionals who may not be a part of the child's IEP Team in the group that determines if additional data are needed to make an eligibility determination and determine the child's educational needs. We believe that public agencies should have flexibility in determining how to define 'qualified professionals' and we do not believe a definition should be included in the regulations." 71 Fed. Reg. 46644 (August 14, 2006).

"Based on the review of existing evaluation data, and input from the child's parents, the IEP Team and other qualified professionals, as appropriate, must determine whether additional data are needed to determine whether the child continues to be a child with a disability, and the educational needs of the child; the present levels of academic achievement and related developmental needs of the child; whether the child continues to need special education; and whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum. 34 CFR §300.305(a)(2). If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of: (i) that determination and the reasons for the determination; and (ii) the right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs. 34 CFR §300.305(d)(1). Under these circumstances, the public agency is not required to conduct an assessment unless requested to do so by the child's parents. 34 CFR §300.305(d)(2). If the parents do not request an assessment, then the review of existing data may constitute the reevaluation." [OSEP Letter to Anonymous \(February 6, 2007\)](#).

"Under 34 CFR §300.304, any initial evaluation or reevaluation must use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability under 34 CFR §300.8 and the content of the child's IEP. In addition, the public agency may not use any single measure or assessment as the sole criterion for determining whether the child is a child with a disability and for determining an appropriate educational program for the child.

"Based on these evaluation requirements, we believe that only in limited circumstances could a public agency conduct an initial evaluation only through review of existing data on the child, and that, in most instances, review of existing evaluation data on the child generally would be insufficient for a team to determine whether a child qualifies as a child with a disability and the nature and extent of the child's educational needs." [OSEP Letter to Copenhagen \(October 19, 2007\)](#).

"If a parent who revoked consent for special education and related services later requests that his or her child be re-enrolled in special education, an LEA must treat this request as a request for an initial evaluation under § 300.301 (rather than a reevaluation under § 300.303). However, depending on the data available, a new evaluation may not always be required. An initial evaluation, under § 300.305, requires a review of existing evaluation

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data that includes classroom based, local, or State assessments, and classroom based observations by teachers and related services providers. On the basis of that review and input from the child's parents, the IEP Team and other qualified professionals must identify what additional data, if any, are needed to determine whether the child is a child with a disability, as defined in § 300.8, and the educational needs of the child. Therefore, a public agency may not always have to expend resources on a 'new' initial evaluation." 73 Fed. Reg. 73015 (December 1, 2008).

"[T]he review of existing data is part of the reevaluation process.... The reevaluation commences with the review of existing data.... [T]he public agency is not required to obtain parental consent before reviewing existing data as part of an evaluation or a reevaluation." [OSEP Letter to Anonymous \(February 6, 2007\)](#).

"The regulations regarding reevaluations at 34 CFR §300.303 clarify that a public agency is sometimes required to conduct a reevaluation even if there is no dispute regarding the child's eligibility....In some instances, additional data are not needed to determine whether any modifications to the child's special education and related services are needed. However, that does not mean that the evaluation does not meet the definition of an 'evaluation' at 34 CFR §300.15." [OSEP Letter to Sarzynski \(May 6, 2008\)](#).

Through the implementation of the district policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the district ensures that a review of existing evaluation data occurs as part of an initial evaluation if appropriate, and as part of any reevaluation in conformance with the IDEA and its accompanying federal regulations, State statutes and regulations.

OPERATING GUIDELINE:

EVALUATION PROCEDURES

CATEGORY: FULL AND INDIVIDUAL EVALUATION
FRAMEWORK: EVALUATION PROCEDURES

REFERRAL & INITIAL EVALUATION

The District will use the *Student Intervention Team (SIT)* to consider all early intervening services provided all scientifically based reading or other programs used, any support services available to all students prior to referral for special education evaluation. Interventions such as tutorials, remedial support, compensatory support, and other services will be considered and documented by the *SIT Team* prior to referral for special education evaluation.

Children residing within the Brownwood Independent School District who are suspected of having a disability may be referred by the *SIT Team* for special education evaluation.

- a. For school-age children, early intervening services must be documented by the *SIT Team*.
- b. For school-age children, the suspected disability must be interfering with the student's educational progress in order to warrant a referral.
- c. When a parent requests a special education referral, the school should
 - 1) give the parent a copy of the Notice of Procedural Safeguards and get a signed and dated receipt; and
 - 2) either proceed with the REED and evaluation process or give the parents a written Notice of Proposal or Refusal.
- d. Students who are not currently enrolled on a campus in BISD may also be referred by the principal, designee of the student's school/private school, physician, parent, etc.
- e. Students who are new to BISD and have been receiving special education services in the student's previous district will not go through the referral process.

Each campus will establish campus level general education personnel membership of the *SIT Team*.

- a. The general education teacher will consider the student experiencing difficulty in the general classroom for all support services available to all students such as tutorial, remedial, compensatory, and other services. The Special Education Department recommends that the principal, school counselor, and/or interventionist discuss possible instructional alternatives with the teacher prior to the initiation of the *SIT Team* to assure that early intervening services and scientifically based programs are being implemented.
- b. The general education teacher will discuss, consider, and document student educational

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concerns and all educational alternatives and options available and those tried and reasons

why those tried did not work.

c. If the student has completed three tiers of interventions and has not reached the expected level

of performance a SIT meeting will be scheduled with the appropriate evaluation specialist

(educational diagnostician or LSSP) in order to review documentation and prepare referral

packet.

d. The Tier III meeting constitutes a Review of Existing Education Data (REED) meeting.

Membership of this meeting shall include a general education teacher who best knows the

student, a special education teacher, a campus representative (principal or designee), the

parent, and any other person with pertinent knowledge of the student. All required information

(including Procedural Safeguards) will be completed at this meeting, including appropriate

signatures and dates. Required information includes the TEA publication "A Guide to the

Admission, Review and Dismissal Process". The student's referral data shall be maintained for

documentation purposes within the special education student's eligibility folder.

SIT Team Referral Process

1. When the Phase III/REED meeting is completed and a referral is initiated, a Referral Packet will be

completed. The Referral Packet includes (but is not limited to) Parental Receipt of Procedural

Safeguards, Notice of Evaluation and Consent for Evaluation, and all *SIT Team* information.

2. The special education evaluation personnel records the date parent signed Consent for Evaluation and

the date the FIE is due.

3. At the Tier III/REED meeting, the evaluation person determines the type(s) of evaluation needed and

contacts the Director of Special Education who 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, related services, etc.).

4. The evaluation person conducts the evaluation and completes the Full and Individual Evaluation (FIE)

written report. The appropriate campus personnel are notified when the report is completed.

5. The BISD Special Education Department evaluation specialist will contact campus personnel when

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the data collection is complete and ready for the ARD/IEP committee's review. The BISD Special

Education Department will schedule the ARD/IEP meeting, send the Notice of ARD/IEP Meeting to the parent, and notify all required meeting participants.

The purpose of the evaluation is to determine eligibility for special education services.

GROUP OF QUALIFIED PROFESSIONALS

Each evaluation must be conducted by a group of qualified professionals, consisting of a licensed specialist in school psychology or educational diagnostician and a certified or licensed practitioner with experience and training in the area of the disability.

SPECIAL EVALUATION CIRCUMSTANCES

Students who are not currently enrolled on a campus in the district may be referred for an evaluation by the parent, a physician, the designee of a private school, etc.

The BISD Special Education Department will schedule a time and location for evaluation.

If the student is not available at the scheduled evaluation time, the BISD Special Education Department will contact the parent to reschedule the evaluation for a new time.

After three attempts of scheduling the assessment appointment, the evaluation personnel will bring documentation of attempts, including phone calls, visits to home and place of business, and written correspondence to the Director for further action. If the documentation of attempts is sufficient, the Director will send a letter to the parents regarding the attempts to evaluate.

CHILD FIND

Child Find refers to the process of locating, evaluating and identifying individuals (birth through 21 years of age) in need of special education services. The District coordinates ongoing public awareness Child Find efforts with the Region 15 Education Service Center. The district may also conduct early childhood screenings; display public notices; and advertise the availability of services through the media; meetings with private schools; and letters to nursing homes, physicians, residential facilities, group homes, detention facilities, Mental Health Mental Retardation, and hospitals.

The district has defined a general education process to facilitate meeting the BISD Child Find responsibilities by which children suspected of having a disability are referred for an evaluation. Referrals for a special education evaluation may be made by school personnel or the student's parent. Required forms or information concerning the referral process for students currently enrolled in BISD can be obtained from the principal (or designee), educational diagnostician, or speech/language therapist on each campus. Upon receipt of a completed referral the BISD Special Education Department personnel conduct a Full Individual Evaluation to identify whether or not the child has a disability.

Guidelines for processing inquiries about referring a child not presently enrolled in BISD are dependent on the age and enrollment status of the child. BISD Special Education Department secretary maintains a Child Find referral log containing pertinent identifying

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information obtained when such an inquiry is received. The information is then communicated to the appropriate personnel or agency based on the following guidelines.

Preschool aged children

For children in the birth - 36 months age range: Within 2 working days from the date a Child Find inquiry is received, school district personnel forward the information to the ESC Region XV Early Childhood Intervention (ECI) program so an ECI Service Coordinator can be assigned to the case. If the referral is initiated within 90 days of the child's 3rd birthday, BISD may choose to process the referral without routing it through the ECI program.

For children 3 - 5 years of age who have not received services through the ECI program, parents may be referred to the elementary campus. In addition, the student's identifying information is sent to the evaluation personnel who will, in turn, contact the parent to discuss the possibility of completing a referral for evaluation.

For children approaching 3 years of age who are receiving services through the ECI program, the ECI Service Coordinator will offer the parent an opportunity for a face-to-face meeting with school district personnel 90 days prior to the child's 3rd birthday and (if the parent consents to pursuing an evaluation by the district) will provide BISD with referral information within 90 days prior to the child's 3rd birthday. BISD evaluation personnel receives and processes the referrals and conducts the appropriate evaluations.

School Age 5 -21 years

Inquiries about referring individuals in this age range who are not currently enrolled in school should be documented on the Child Find Log and routed to the principal (or designee) on the age-appropriate campus closest to the child's home.

The BISD Special Education Department personnel are responsible for processing referrals and conducting evaluations on students who are enrolled in private schools, including home schools, located within BISD boundaries. During the evaluation process, BISD Special Education Department may request documentation of the following criteria to determine whether the student has received high quality, research based instruction in reading and mathematics:

- a. the adopted curriculum, including scope and sequence;
- b. formal documentation of student progress and performance gains;
- c. teaching strategies and methods used with the student; and
- d. targeted instruction based on identified student needs.

EVALUATIONS CONDUCTED BY CONTRACTED PERSONNEL

Some disabling conditions or other special circumstances require that evaluations be conducted by qualified professionals who are not employees of BISD. The BISD Special Education Department Office maintains a list of physicians and other professionals with whom the district contracts to provide such evaluations. In order to obtain an outside evaluation for a student, the campus diagnostician submits an authorization for payment form to this secretary specifying the type of evaluation requested and the purpose of the

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evaluation. The diagnostician should also submit a data sheet which reports any evaluation information that may have been gathered and may be useful to the contracted personnel in making the eligibility determination. The secretary schedules an appointment with the appropriate personnel and notifies the student's parent(s), the campus administrator (or designee) and the campus diagnostician as to the time and place of the appointment.

REEVALUATION

In order to provide updated information for an ARD committee's review of student's eligibility and programming -- the reevaluation process is initiated at the request of an ARD committee or routinely once each three years following the initial full and individual evaluation.

The ARD committee will review existing evaluation data on each student to consider the need for collecting additional evaluation data for purposes of determining: whether the student continues to have a disability, present performance levels and educational needs of the student, continued need for special education and related services, any additions or modifications to the services received to enable the student to meet IEP goals and participate in the general curriculum. The ARD committee identifies additional data to be collected as necessary and specifies a timeline for completion of evaluation.

If no additional evaluation data is deemed necessary to determine whether the student continues to have a disability, the committee will notify the student's parents (or adult student):

- a. of the reasons the committee decided no additional data is necessary;
- b. of the parent's right to request additional evaluation to determine whether the student continues to have a disability.

Reevaluations should be completed on or before the anniversary date of the previous full and individual evaluation.

INDEPENDENT EDUCATIONAL EVALUATION

If the parent disagrees with BISD's current evaluation, the district may offer to resolve the parent's disagreement by providing an additional evaluation.

However, a parent may choose to seek an Independent Educational Evaluation (IEE) if the parent disagrees with all or part of a comprehensive assessment obtained by the district. Such an IEE will be paid for by BISD if the IEE meets BISD criteria. BISD has the option to initiate a due process hearing to show that its own evaluation is appropriate. If BISD prevails in the hearing, the parent still has the right to an IEE but not at public expense.

Number of IEE'S

If BISD 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 BISD. The results of a parent-initiated IEE will be

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considered by BISD, but such consideration does not make BISD liable for reimbursement for the IEE.

Notification to BISD

In order to obtain an IEE at public expense, the parent or guardian must notify the special education director in writing. The parent or guardian should request an IEE as soon as possible, but no later than six months following BISD's evaluation in question. The IEE request should specify areas of disagreement with BISD's evaluation and list assessment questions to be addressed by the IEE. The parent or guardian must provide the name of evaluator, to allow BISD to check certification/license of evaluator and make contact directly with the evaluator.

Location of the Examiner

Upon request, parents will be provided information regarding where an IEE may be obtained.

Qualifications of the Examiner

Evaluators must provide proof of expertise in the area of evaluation techniques and interpretation and in the area of dispute. Additionally the evaluator must have current certification or license in the area of suspected disability and/or educational need.

Evaluation Procedures

Evaluators must agree to follow TEA guidelines in completing the evaluation. The evaluation should be designed to address whether or not the child has a disability as set forth in federal and state law and to assess specific areas of educational need.

Evaluators must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent and the school and should not use any single measure or assessment as the sole criterion for determining if the child is a child with a disability.

Assessment instruments, materials and techniques must be: 1) selected and administered so as not to be discriminatory on a racial, cultural or sexual basis, 2) provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally and functionally, 3) used for purposes for which the assessments or measures are valid and reliable, and 4) administered in accordance with any instructions provided by the producer of the assessment instruments.

Written Report

The IEE evaluator must provide an original typed or computer-generated evaluation report within 30 calendar days from the date BISD mails a written authorization to the evaluator and no later than five (5) days prior to the Admission, Review and Dismissal (ARD) committee meeting. Protocols must be available for review. The report must include an original signature and title of all persons participating in the evaluation. The report must comply with all requirements of state and federal regulations.

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Condition of Payment

Reimbursement/payment will be made directly to the evaluator upon receipt of an evaluation report which meets all of BISD's/TEA's criteria. Parents obtaining an IEE without following BISD's procedures will risk non-payment.

Reasonable Fees

BISD will not pay unreasonably excessive fees. An unreasonably excessive fee is one that is 25% or more above the prevailing fees in the area (as established in the Medicaid/Medicare Service Provider Manual) by professionals who are qualified to conduct specific tests and the unique circumstances of the child. This determination will be made by the appropriate director of special education.

Location of Evaluation

Whenever an IEE is at public expense, the criteria under which the IEE is obtained, including the location of the examination and the qualifications of the examiner, must be the same as the criteria which BISD uses when it initiates an evaluation. The evaluator must be located within a 100 mile radius of BISD. This will allow the evaluator access to the public school for observation of the student and access to ARD meetings.

Conditions for Waiver of Cost

Parents will be allowed the opportunity to demonstrate to an ARD committee that unique circumstances justify an IEE that does not fall within BISD criteria.

Reimbursement for Unilaterally Obtained IEE

BISD will not consider a parent request for payment for a unilaterally parent-initiated IEE unless the request is made within a reasonable time after receipt of the results of the evaluation. A reasonable time is defined as 90 calendar days. The request will be presented to the ARD Committee for action. BISD 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 asking for reimbursement. BISD will deny payment of an IEE conducted by someone who does not meet minimum qualifications.

Parent Initiated IEE

The results of a parent-initiated IEE obtained at private expense will be considered by BISD in any decision made with respect to the provision of a free appropriate public education to the student. Such consideration does not make the district liable for payment of the evaluation.

PERSONS RESPONSIBLE: Special Education Department Evaluation Personnel (i.e.)
Educational Diagnostician, Licensed Specialist in School Psychology (LSSP), Speech
Therapist

TIMELINES: The Full Individual Evaluation (FIE) written report will be completed within 60 calendar days from the date of written parental consent. The FIE must be updated no less than once every three year period following the initial evaluation.

MATERIALS: SIT Team documentation, Procedural Safeguards and receipt, "A Guide to the ARD Process" and receipt, Notice & Consent for Assessment, FIE Report, Disability Eligibility Reports, Related Service Eligibility Reports

GUIDING PRINCIPLES

Initial Evaluation

"We believe § 300.300(b) is clear that the 'initial provision of services' means the first time a parent is offered special education and related services after the child has been evaluated in accordance with the procedures in §§ 300.301 through 300.311, and has been determined to be a child with a disability, as defined in § 300.8." 71 Fed. Reg. 46633 (August 14, 2006).

"If a parent who revoked consent for special education and related services later requests that his or her child be re-enrolled in special education, an LEA must treat this request as a request for an initial evaluation under § 300.301 (rather than a reevaluation under § 300.303)." 73 Fed. Reg. 73015 (December 1, 2008).

"The 60-day timeframe begins when the public agency receives the consent for evaluation." 71 Fed. Reg. 46636 (August 14, 2006).

"We believe it is important that it is understood that the 60-day or State-established timeframe does not apply when a child transfers from one school to another school in the same public agency. When a child transfers from one school to another school in the same public agency, we expect that an initial evaluation will be conducted within 60 days of receiving parental consent for the evaluation, or within the State-established timeframe." 71 Fed. Reg. 46638 (August 14, 2006).

Reevaluation

"An initial evaluation of a child is the first complete assessment of a child to determine if the child has a disability under the Act, and the nature and extent of special education and related services required. Once a child has been fully evaluated, a decision has been rendered that a child is eligible for services under the Act, and the required services have been determined, any subsequent evaluation of a child would constitute a reevaluation." 71 Fed. Reg. 46640 (August 14, 2006).

"[A] reevaluation cannot be conditioned on the parent providing a reason for requesting a reevaluation." 71 Fed. Reg. 46640 (August 14, 2006).

"If a parent requests a reevaluation and the public agency disagrees that a reevaluation is needed, the public agency must provide prior written notice to the parent, consistent with § 300.503, that explains, among other things, why the agency refuses to conduct the reevaluation and the parent's right to contest the agency's decision through mediation or a due process hearing." 71 Fed. Reg. 46640 (August 14, 2006).

"We believe that in reaching an agreement that a reevaluation is unnecessary, as provided for in §300.303(b), the parent and public agency will discuss the advantages and disadvantages of conducting a reevaluation, as well as what effect a reevaluation might have on the child's educational program. Therefore, we do not agree with the commenter that additional procedural safeguards are necessary to ensure that parents who agree that a

OPERATING GUIDELINE:

EVALUATION PROCEDURES

reevaluation is unnecessary are aware of the implications of their decision.” 71 Fed. Reg. 46641 (August 14, 2006).

“It is inappropriate for school personnel to encourage a parent to revoke consent for special education and related services. If school personnel believe a child no longer qualifies as a child with a disability, Part B of the Act and its implementing regulations provide a process for making that determination. Specifically §300.305(e), consistent with section 614(c)(5) of the Act, requires that an LEA evaluate a child before determining that the child is no longer a child with a disability. This provision applies when eligibility is in question and an LEA believes a child may no longer be eligible for special education services. A public agency must follow this long-standing procedure if the agency believes a child should no longer receive special education and related services.” 73 Fed. Reg. 73014 (December 1, 2008).

Group of Qualified Professionals

“The change from ‘team members’ to ‘group members’ was made in the 1999 regulations to distinguish this group from the IEP Team, because the team of qualified professionals and the parent in § 300.306(a)(1) that makes the eligibility determination does not necessarily have the same members as an IEP Team. In some States, this group of professionals may have the same individuals as the IEP Team, but in other States, this is not the case.” 71 Fed. Reg. 46649 (August 14, 2006).

Evaluation Procedures

“‘Technically sound instruments’ generally refers to assessments that have been shown through research to be valid and reliable.” 71 Fed. Reg. 46642 (August 14, 2006).

“Section 300.304(c)(4) requires the public agency to ensure that the child is assessed in all areas related to the suspected disability. This could include, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. This is not an exhaustive list of areas that must be assessed. Decisions regarding the areas to be assessed are determined by the suspected needs of the child. If a child’s behavior or physical status is of concern, evaluations addressing these areas must be conducted.” 71 Fed. Reg. 46643 (August 14, 2006).

“As stated by several commenters, it is standard test administration practice to include in the evaluation report the extent to which an assessment varied from standard conditions, including the language or other mode of communication that was used in assessing a child. It is, therefore, unnecessary to include this requirement in the regulations.” 71 Fed. Reg. 46643 (August 14, 2006).

The Statewide Leadership for Evaluation provides leadership to Regional ESCs to provide professional development and technical assistance focused on ensuring that all students suspected of having a disability are provided a thorough and timely full individual evaluation.

The TEA provides additional guidance related to eligibility criteria on the Special Education website.

OPERATING GUIDELINE:

EVALUATION PROCEDURES

Through the implementation of the district policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the district ensures that full and individual evaluations are conducted in conformance with the IDEA and its accompanying federal regulations, State statutes and regulations.

OPERATING GUIDELINE:

SUMMARY OF PERFORMANCE

CATEGORY: FULL AND INDIVIDUAL EVALUATION
FRAMEWORK: [SUMMARY OF PERFORMANCE](#)

A "Summary of Performance" is required for a student whose eligibility terminates due to graduation with a regular high school diploma or a student whose eligibility for special education services terminates due to exceeding age eligibility. Brownwood ISD will provide the student with a summary of performance that contains:

1. a summary of the child's academic achievement;
2. a summary of the child's functional achievement; and
3. recommendations on how to assist the student in meeting their post-secondary goals.

A "Full and Individual Evaluation" must be provided and included as part of the summary of performance for students who meet the criteria for graduation due to successful completion of the individualized education plan (IEP).

PERSONS RESPONSIBLE: Special Education Department Evaluation Personnel – Educational Diagnostician

TIMELINES: The Summary of Performance will be completed at the graduation review ARD meeting.

MATERIALS: Procedural Safeguards and receipt, Guide to the ARD Process, Summary of Performance document, Full Individual Evaluation

GUIDING PRINCIPLES

"Under 34 CFR §300.305(e)(2), an evaluation under 34 CFR §§300.304 through 300.311 is not required before termination of a child's eligibility under Part B of the Individuals with Disabilities Education Act (IDEA) due to graduation from secondary school with a regular diploma, or due to exceeding the age of eligibility for a free appropriate public education (FAPE) under State law. However, under 34 CFR §300.305(c)(3), for a child whose eligibility terminates as described immediately above, a public agency must provide the child with a summary of the child's academic achievement and functional performance, which must include recommendations on how to assist the child in meeting the child's postsecondary goals." [OSEP Letter to Green-Churchwell \(October 19, 2007\)](#).

"The Act also does not require LEAs to provide the postsecondary services that may be included in the summary of the child's academic achievement and functional performance. We believe it would impose costs on public agencies not contemplated by the Act to include such requirements in the regulations." 71 Fed. Reg. 46644 (August 14, 2006).

"The Act does not otherwise specify the information that must be included in the summary and we do not believe that the regulations should include a list of required information. Rather, we believe that State and local officials should have the flexibility to determine the

OPERATING GUIDELINE:

SUMMARY OF PERFORMANCE

appropriate content in a child's summary, based on the child's individual needs and postsecondary goals." 71 Fed. Reg. 46645 (August 14, 2006).

Through the implementation of the district policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the district ensures that a summary of performance is prepared and provided to children with disabilities as required by the IDEA and its accompanying federal regulations, State statutes and regulations.

OPERATING GUIDELINE:

AUDITORY IMPAIRMENT

CATEGORY: FULL AND INDIVIDUAL EVALUATION
FRAMEWORK: [AUDITORY IMPAIRMENT](#)

When considering students who have auditory impairments, the educational diagnostician will collaborate with a professional certified in the education of students with auditory impairments in completing the disability eligibility report.

The required certification for this position is Certified Teacher of the Deaf and Hard-of-Hearing.

The educational diagnostician will remain the case manager of this student and will collect the appropriate reports from the following sources:

- A. Otological Examination, completed by licensed physician, such as an otologist or ENT; and
- B. Audiological Examination, completed by a licensed audiologist.

PERSONS RESPONSIBLE: Special Education Department Evaluation Personnel – educational diagnostician and certified teacher for children identified as deaf or hard-of-hearing.

TIMELINES: The auditory impairment eligibility written report will be completed within 60 calendar days from the date of written parental consent. The eligibility report must be updated no less than once every three year period following the initial evaluation.

MATERIALS: Auditory Impairment Eligibility Report Part A – Otological Examination and Part B – Audiological Examination

GUIDING PRINCIPLES:

“One commenter stated that children who are hard of hearing are often denied special education and related services because the definition of deafness includes the phrase, ‘adversely affects a child’s educational performance,’ which school district personnel interpret to mean that the child must be failing in school to receive special education and related services.... As noted in the Analysis of Comments and Changes section discussing subpart B, we have clarified in § 300.101(c) that a child does not have to fail or be retained in a course or grade in order to be considered for special education and related services. However, in order to be a child with a disability under the Act, a child must have one or more of the impairments identified in section 602(3) of the Act and need special education and related services because of that impairment. Given the change in § 300.101(c), we do not believe clarification in § 300.8(c)(3) is necessary.” 71 Fed. Reg. 46549 (August 14, 2006).

“Whether a child’s disability ‘adversely affects a child’s educational performance’ is considered for all disability categories in 34 CFR §300.8(c), because, to be eligible, a child must qualify as a child with a disability under 34 CFR §300.8 and need special education because of a particular impairment or condition. Although the phrase ‘adversely affects educational performance’ is not specifically defined, the extent of the impact that the child’s impairment or condition has on the child’s educational performance is a decisive factor in a

OPERATING GUIDELINE:

AUDITORY IMPAIRMENT

child's eligibility determination under Part B. We believe that the evaluation and eligibility determination processes described in our response to question 1 above are sufficient for the group of qualified professionals and the parent to ascertain how the child's impairment or disability affects the child's ability to function in an educational setting. A range of factors—both academic and nonacademic—can be considered in making this determination for each individual child. See 34 CFR §300.306(c). Even if a child is advancing from grade to grade or is placed in the regular educational environment for most or all of the school day, the group charged with making the eligibility determination still could determine that the child's impairment or condition adversely affects the child's educational performance because the child could not progress satisfactorily in the absence of specific instructional adaptations or supportive services, including modifications to the general education curriculum. 34 CFR §300.101(c) (regarding requirements for individual eligibility determinations for children advancing from grade to grade).” [OSEP Letter \(November 28, 2007\)](#).

The TEA provides additional guidance related to [eligibility criteria](#) on the Special Education website. Information related to [Deaf Education](#) is provided by the TEA through statewide leadership functions. ESC Regions 4, 10, 11, and 20 provide leadership, staff development, technical assistance and support to assist Texas school districts in meeting the educational needs of students who are deaf or hard of hearing. Priorities include student communication and competence, access to the general education curriculum, literacy, and educational interpreter training. Contact information for the [Regional Day School Programs for the Deaf](#) is provided.

Through the implementation of the district policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the district ensures that when conducting an initial evaluation or a reevaluation of a child suspected of having an auditory impairment, the group of qualified professionals will conduct a full and individual evaluation to determine whether the child meets the eligibility criteria for special education services as a child with an auditory impairment as required by the IDEA and its accompanying federal regulations, State statutes and regulations.

OPERATING GUIDELINE:

AUTISM

CATEGORY: FULL AND INDIVIDUAL EVALUATION
FRAMEWORK: [AUTISM](#)

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

The evaluation to determine eligibility as a child with autism is conducted by a team of professionals that consists of an educational diagnostician, LSSP, and speech language therapist. As appropriate an occupational therapist and physical therapist may be a part of the team conducting the evaluation.

PERSONS RESPONSIBLE: Special Education Department Evaluation Personnel

TIMELINES: The autism eligibility written report will be completed within 60 calendar days from the date of written parental consent. The eligibility report must be updated no less than once every three year period following the initial evaluation.

MATERIALS: Procedural Safeguards and receipt, "A Guide to the ARD Process" and receipt, Notice & Consent for Assessment, FIE Report, FIE Disability Report: Autism

GUIDING PRINCIPLES

"Whether a child's disability 'adversely affects a child's educational performance' is considered for all disability categories in 34 CFR §300.8(c), because, to be eligible, a child must qualify as a child with a disability under 34 CFR §300.8 and need special education because of a particular impairment or condition. Although the phrase 'adversely affects educational performance' is not specifically defined, the extent of the impact that the child's impairment or condition has on the child's educational performance is a decisive factor in a child's eligibility determination under Part B. We believe that the evaluation and eligibility determination processes described in our response to question 1 above are sufficient for the group of qualified professionals and the parent to ascertain how the child's impairment or disability affects the child's ability to function in an educational setting. A range of factors—both academic and nonacademic—can be considered in making this determination for each individual child. See 34 CFR §300.306(c). Even if a child is advancing from grade to grade or is placed in the regular educational environment for most or all of the school day, the group charged with making the eligibility determination still could determine that the child's impairment or condition adversely affects the child's educational performance because the child could not progress satisfactorily in the absence of specific instructional adaptations or supportive services, including modifications to the general education curriculum. 34 CFR §300.101(c) (regarding requirements for individual eligibility determinations for children advancing from grade to grade)." [OSEP Letter \(November 28, 2007\)](#).

The TEA provides additional guidance related to [eligibility criteria](#) for autism on the Special Education website. Through the network of the 20 Regional Education Service Centers

OPERATING GUIDELINE:

AUTISM

(ESCs) around the state and in conjunction with the Texas Education Agency, the Texas Statewide Leadership for [Autism](#) is providing a mechanism to access training, technical assistance, support, and resources for educators who serve students with autism.

“The [Texas Autism Resource Guide for Effective Teaching](#) is designed to assist schools in developing practices from initial referral to program development and implementation with a strong emphasis on research-based and peer-reviewed strategies. As such, this guide contains six sections relative to autism spectrum disorders (AU): (a) eligibility vs. diagnosis, (b) educational implications, (c) evaluation, (d) interventions, (e) index, and (f) a glossary. Information is presented in alphabetical order; item order reflects no endorsement or mandate. Further, decisions about which assessments and interventions to use are left to qualified individuals or committees charged with reviewing and creating programs for students with AU.” From the [Texas Statewide Leadership for Autism](#) which provides a mechanism to access training, technical assistance, support, and resources for educators who serve students with autism.

Through the implementation of the district policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the district ensures that when conducting an initial evaluation or a reevaluation of a child suspected of having autism, the group of qualified professionals will conduct a full and individual evaluation to determine whether the child meets the eligibility criteria for special education services as a child with autism as required by the IDEA and its accompanying federal regulations, State statutes and regulations.

OPERATING GUIDELINE:

DEAF-BLINDNESS

CATEGORY: FULL AND INDIVIDUAL EVALUATION
FRAMEWORK: [DEAF-BLINDNESS](#)

When considering students for the eligibility of deaf-blindness, the educational diagnostician will collaborate with a speech and language pathologist, a professional certified in the education of students with auditory impairments, and a professional certified in the education of students with visual impairments in completing the disability eligibility report to determine whether:

1. the student appears to meet eligibility criteria for auditory or visual impairment;
2. the student appears to meet eligibility for visual impairment and has a suspected hearing loss that cannot be demonstrated conclusively, but there is no speech at an age when speech would normally be expected;
3. the student has documented hearing and vision 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 education performance; or
4. the student has 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 education performance.

The required certification for these positions is Certified Teacher of the Deaf and Hard-of-Hearing and Certified Teacher of the Visually Impaired.

PERSONS RESPONSIBLE: Special Education Department Evaluation Personnel – educational diagnostician, certified teacher for children identified as having visual impairments, certified teacher for children identified as having auditory impairments, and speech and language pathologist

TIMELINES: The deaf-blindness eligibility written report will be completed within 60 calendar days from the date of written parental consent. The eligibility report must be updated no less than once every three year period following the initial evaluation.

MATERIALS: Deaf-Blindness Eligibility Report, Auditory Impairment Eligibility Report (including Parts A and B), Visual Impairment Eligibility Report (including Parts A and B), Communication Assessment Report

GUIDING PRINCIPLES:

“Whether a child’s disability ‘adversely affects a child’s educational performance’ is considered for all disability categories in 34 CFR §300.8(c), because, to be eligible, a child must qualify as a child with a disability under 34 CFR §300.8 and need special education because of a particular impairment or condition. Although the phrase ‘adversely affects educational performance’ is not specifically defined, the extent of the impact that the child’s impairment or condition has on the child’s educational performance is a decisive factor in a child’s eligibility determination under Part B. We believe that the evaluation and eligibility determination processes described in our response to question 1 above are sufficient for the group of qualified professionals and the parent to ascertain how the child’s impairment or disability affects the child’s ability to function in an educational setting. A range of factors—

OPERATING GUIDELINE:

DEAF-BLINDNESS

both academic and nonacademic—can be considered in making this determination for each individual child. See 34 CFR §300.306(c). Even if a child is advancing from grade to grade or is placed in the regular educational environment for most or all of the school day, the group charged with making the eligibility determination still could determine that the child's impairment or condition adversely affects the child's educational performance because the child could not progress satisfactorily in the absence of specific instructional adaptations or supportive services, including modifications to the general education curriculum. 34 CFR §300.101(c) (regarding requirements for individual eligibility determinations for children advancing from grade to grade).” [OSEP Letter \(November 28, 2007\)](#).

The [State Leadership Function Three Low Incidence Disabilities](#) provides leadership to Regional ESCs in building the capacity to meet the needs of students who are deaf-blind to facilitate professional development to meet statewide needs.

The [Texas Deafblind Project](#) provides information and training about deaf-blindness to families and the professionals that work with them. The Deafblind Outreach team provides technical assistance that is designed to meet the unique needs of children, birth through 21 years of age, who have both a vision and hearing impairment. Outreach services are available statewide, and are provided in coordination with local schools and regional ESCs.

Through the implementation of the district policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the district ensures that when conducting an initial evaluation or a reevaluation of a child suspected of having deaf-blindness, the group of qualified professionals will conduct a full and individual evaluation to determine whether the child meets the eligibility criteria for special education services as a child with deaf-blindness as required by the IDEA and its accompanying federal regulations, State statutes and regulations.

OPERATING GUIDELINE:

EMOTIONAL DISTURBANCE

CATEGORY: FULL AND INDIVIDUAL EVALUATION
FRAMEWORK: [EMOTIONAL DISTURBANCE](#)

When considering students who may have an emotional disturbance, the educational diagnostician will collaborate with a licensed specialist in school psychology (LSSP) in completing the disability eligibility report which may include information from the parents and school staff.

The required certification for this position is a licensed specialist in school psychology (LSSP).

The educational diagnostician will remain the case manager of this student and will collect the appropriate reports from the licensed specialist in school psychology (LSSP).

PERSONS RESPONSIBLE: Special Education Department Evaluation Personnel

TIMELINES: The emotional disturbance eligibility written report will be completed within 60 calendar days from the date of written parental consent. The report must include an original signature and title of all persons participating in the evaluation. The eligibility report must be updated no less than once every three year period following the initial evaluation.

MATERIALS: Procedural Safeguards and receipt, "A Guide to the ARD Process" and receipt, Notice & Consent for Assessment, FIE Report, FIE Disability Report: Emotional Disturbance

GUIDING PRINCIPLES

"Historically, it has been very difficult for the field to come to consensus on the definition of emotional disturbance, which has remained unchanged since 1977. On February 10, 1993, the Department published a 'Notice of Inquiry' in the Federal Register (58 FR 7938) soliciting comments on the existing definition of serious emotional disturbance. The comments received in response to the notice of inquiry expressed a wide range of opinions and no consensus on the definition was reached. Given the lack of consensus and the fact that Congress did not make any changes that required changing the definition, the Department recommended that the definition of emotional disturbance remain unchanged. We reviewed the Act and the comments received in response to the NPRM and have come to the same conclusion. Therefore, we decline to make any changes to the definition of emotional disturbance." 71 Fed. Reg. 46550 (August 14, 2008).

"Whether a child's disability 'adversely affects a child's educational performance' is considered for all disability categories in 34 CFR §300.8(c), because, to be eligible, a child must qualify as a child with a disability under 34 CFR §300.8 and need special education because of a particular impairment or condition. Although the phrase 'adversely affects educational performance' is not specifically defined, the extent of the impact that the child's impairment or condition has on the child's educational performance is a decisive factor in a child's eligibility determination under Part B. We believe that the evaluation and eligibility determination processes described in our response to question 1 above are sufficient for the group of qualified professionals and the parent to ascertain how the child's impairment or

OPERATING GUIDELINE:

EMOTIONAL DISTURBANCE

disability affects the child’s ability to function in an educational setting. A range of factors—both academic and nonacademic—can be considered in making this determination for each individual child. See 34 CFR §300.306(c). Even if a child is advancing from grade to grade or is placed in the regular educational environment for most or all of the school day, the group charged with making the eligibility determination still could determine that the child’s impairment or condition adversely affects the child’s educational performance because the child could not progress satisfactorily in the absence of specific instructional adaptations or supportive services, including modifications to the general education curriculum. 34 CFR §300.101(c) (regarding requirements for individual eligibility determinations for children advancing from grade to grade).” [OSEP Letter \(November 28, 2007\)](#).

The TEA provides additional guidance related to [eligibility criteria](#) for emotional disturbance on the Special Education website.

Through the implementation of the district policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the district ensures that when conducting an initial evaluation or a reevaluation of a child suspected of having an emotional disturbance, the group of qualified professionals will conduct a full and individual evaluation to determine whether the child meets the eligibility criteria for special education services as a child with an emotional disturbance as required by the IDEA and its accompanying federal regulations, State statutes and regulations.

OPERATING GUIDELINE:

INTELLECTUAL DISABILITY

CATEGORY: FULL AND INDIVIDUAL EVALUATION
FRAMEWORK: [INTELLECTUAL DISABILITY](#)

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

When considering students for the eligibility of intellectual disability, the educational diagnostician will complete cognitive ability assessments and gather adaptive behavior information from the parent, teachers, and other knowledgeable adults as appropriate in completing the disability eligibility report to determine whether:

1. the child demonstrates significantly subaverage general intellectual functioning in which the overall test score is at least two standard deviations below the mean, when taking into consideration the standard error of measurement of the test
2. The child concurrently exhibits deficits in at least two of the following areas of adaptive behavior: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety.

PERSONS RESPONSIBLE: Special Education Department Evaluation Personnel

TIMELINES: The written Full and Individual Eligibility (FIE) report will be completed within 60 calendar days from the date of written parental consent. The eligibility report must be updated no less than once every three year period following the initial evaluation.

MATERIALS: Procedural Safeguards and receipt, "A Guide to the ARD Process" and receipt, Notice & Consent for Assessment, FIE Report, Disability Eligibility Reports Intellectual Disability Report, adaptive behavior scales, cognitive ability tests.

GUIDING PRINCIPLES

The TEA provides guidance related to [eligibility criteria](#) for intellectual disability on the Special Education website.

The [State Leadership Function Three Low Incidence Disabilities](#) provides leadership to Regional ESCs in building the capacity to meet the needs of students who are severely cognitively disabled to facilitate professional development to meet statewide needs.

Through the implementation of the district's policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the district ensures that when conducting an initial evaluation or a reevaluation of a child suspected of having mental retardation, the group of qualified professionals will conduct a full and individual evaluation to determine whether the child meets the eligibility criteria for special education services as a child with an intellectual disability as required by the IDEA and its accompanying federal regulations, State statutes and regulations.

OPERATING GUIDELINE:

MULTIPLE DISABILITIES

CATEGORY: FULL AND INDIVIDUAL EVALUATION

FRAMEWORK: [MULTIPLE DISABILITIES](#)

A child may be considered to be a child with multiple disabilities if:

- The child has two or more impairments occurring simultaneously, *such as*:
 - Mental retardation-blindness; and
 - Mental retardation-orthopedic impairment;
- The disabilities are expected to continue indefinitely;
- The disabilities severely impair the child's performance in two or more of the following areas:
 - Psychomotor skills;
 - Self-care skills;
 - Communication;
 - Social and emotional development; or
 - Cognition
- The combination of disabilities causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments; and
- By reason of the multiple disabilities, the child needs special education and related services.

PERSONS RESPONSIBLE: Special Education Department Evaluation Personnel

TIMELINES: The Multiple Disabilities written report will be completed within 60 calendar days from the date of written parental consent. The eligibility report must be updated no less than once every three year period following the initial evaluation.

MATERIALS: Procedural Safeguards and receipt, "A Guide to the ARD Process" and receipt, Notice & Consent for Assessment, FIE Report, FIE Disability Report: Multiple Disabilities

GUIDING PRINCIPLE

"The definition of multiple disabilities has been in the regulations since 1977 and does not expand eligibility beyond what is provided for in the Act. The definition helps ensure that children with more than one disability are not counted more than once for the annual report of children served because States do not have to decide among two or more disability categories in which to count a child with multiple disabilities." 71 Fed. Reg. 46550 (August 14, 2006).

The [State Leadership Function Three Low Incidence Disabilities](#) provides leadership to Regional ESCs in building the capacity to meet the needs of students who are severely

OPERATING GUIDELINE:

MULTIPLE DISABILITIES

cognitively disabled, medically fragile, and/or deaf-blind to facilitate professional development to meet statewide needs.

Through the implementation of the district policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the district ensures that when conducting an initial evaluation or a reevaluation of a child suspected of having multiple disabilities, the group of qualified professionals will conduct a full and individual evaluation to determine whether the child meets the eligibility criteria for special education services as a child with multiple disabilities as required by the IDEA and its accompanying federal regulations, State statutes and regulations.

OPERATING GUIDELINE:

NONCATEGORICAL EARLY CHILDHOOD

CATEGORY: FULL AND INDIVIDUAL EVALUATION
FRAMEWORK: [NONCATEGORICAL EARLY CHILDHOOD](#)

A child may be described as a child with noncategorical early childhood if:

- The child is between the ages of 3-5; and
- The child is suspected of meeting the eligibility criteria for one of the following:
 - Intellectual Disability
 - Emotional Disturbance
 - Specific Learning Disability
 - Autism.

When making the determination of NCEC, a disability report for the suspected eligibility category must accompany the NCEC eligibility report.

PERSONS RESPONSIBLE: Special Education Department Evaluation Personnel

TIMELINES: The FIE will be completed by within 60 calendar days from the date of written parental consent. This eligibility report must be updated before age 6.

MATERIALS: Procedural Safeguards and receipt, "A Guide to the ARD Process" and receipt, Notice & Consent for Assessment, FIE Report, FIE Disability Report: Noncategorical Early Childhood

GUIDING PRINCIPLE

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

Through the implementation of the district policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the district ensures that when conducting an evaluation of a child between the ages of 3-5 for a possible noncategorical disability classification, the group of qualified professionals will conduct a full and individual evaluation to determine whether the child meets the eligibility criteria for special education services under a noncategorical disability classification as required by the IDEA and its accompanying federal regulations, State statutes and regulations.

OPERATING GUIDELINE:

ORTHOPEdic IMPAIRMENT

CATEGORY: FULL AND INDIVIDUAL EVALUATION
FRAMEWORK: [ORTHOPEdic IMPAIRMENT](#)

When considering students who may receive special education eligibility under the disability category of orthopedic impairment, the group of qualified professionals must include a licensed physician. The physician must complete the FIE Disability Report: Orthopedic Impairment for review by the ARD committee.

PERSONS RESPONSIBLE: Special Education Department Evaluation Personnel

TIMELINES: The orthopedic impairment eligibility written report will be completed within 60 calendar days from the date of written parental consent. The eligibility report must be updated no less than once every three year period following the initial evaluation.

MATERIALS: Procedural Safeguards and receipt, "A Guide to the ARD Process" and receipt, Notice & Consent for Assessment, FIE Report, FIE Disability Report: Orthopedic Impairment

GUIDING PRINCIPLES:

"One commenter requested that the examples of congenital anomalies in the definition of orthopedic impairment in [the IDEA 1997 federal regulation § 300.7(c)(8)] be retained... [Those] examples of congenital anomalies...are outdated and unnecessary to understand the meaning of orthopedic impairment. We, therefore, decline to include the examples in § 300.8(c)(8)." 71 Fed. Reg. 46550 (August 14, 2006).

"Whether a child's disability 'adversely affects a child's educational performance' is considered for all disability categories in 34 CFR §300.8(c), because, to be eligible, a child must qualify as a child with a disability under 34 CFR §300.8 and need special education because of a particular impairment or condition. Although the phrase 'adversely affects educational performance' is not specifically defined, the extent of the impact that the child's impairment or condition has on the child's educational performance is a decisive factor in a child's eligibility determination under Part B. We believe that the evaluation and eligibility determination processes described in our response to question 1 above are sufficient for the group of qualified professionals and the parent to ascertain how the child's impairment or disability affects the child's ability to function in an educational setting. A range of factors—both academic and nonacademic—can be considered in making this determination for each individual child. See 34 CFR §300.306(c). Even if a child is advancing from grade to grade or is placed in the regular educational environment for most or all of the school day, the group charged with making the eligibility determination still could determine that the child's impairment or condition adversely affects the child's educational performance because the child could not progress satisfactorily in the absence of specific instructional adaptations or supportive services, including modifications to the general education curriculum. 34 CFR §300.101(c) (regarding requirements for individual eligibility determinations for children advancing from grade to grade)." [OSEP Letter \(November 28, 2007\)](#).

OPERATING GUIDELINE:

ORTHOPEDIC IMPAIRMENT

Through the implementation of the district policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the district ensures that when conducting an initial evaluation or a reevaluation of a child suspected of having an orthopedic impairment, the group of qualified professionals will conduct a full and individual evaluation to determine whether the child meets the eligibility criteria for special education services as a child with an orthopedic impairment as required by the IDEA and its accompanying federal regulations, State statutes and regulations.

OPERATING GUIDELINE:

OTHER HEALTH IMPAIRMENT

CATEGORY: FULL AND INDIVIDUAL EVALUATION
FRAMEWORK: [OTHER HEALTH IMPAIRMENT](#)

When considering students who may receive special education eligibility under the disability category of other health impairment, the group of qualified professionals must include a licensed physician. The physician must complete the FIE Disability Report: Other Health Impairment for review by the ARD committee.

PERSONS RESPONSIBLE: Special Education Department Evaluation Personnel

TIMELINES: The FIE will be completed within 60 calendar days from the date of written parental consent. The eligibility report must be updated no less than once every three year period following the initial evaluation.

MATERIALS: Procedural Safeguards and receipt, "A Guide to the ARD Process" and receipt, Notice & Consent for Assessment, FIE Report, FIE Disability Report: Other Health Impairment

GUIDING PRINCIPLES

"The list of acute or chronic health conditions in the definition of other health impairment is not exhaustive, but rather provides examples of problems that children have that could make them eligible for special education and related services under the category of other health impairment." 71 Fed. Reg. 46550 (August 14, 2006).

"Whether a child's disability 'adversely affects a child's educational performance' is considered for all disability categories in 34 CFR §300.8(c), because, to be eligible, a child must qualify as a child with a disability under 34 CFR §300.8 and need special education because of a particular impairment or condition. Although the phrase 'adversely affects educational performance' is not specifically defined, the extent of the impact that the child's impairment or condition has on the child's educational performance is a decisive factor in a child's eligibility determination under Part B. We believe that the evaluation and eligibility determination processes described in our response to question 1 above are sufficient for the group of qualified professionals and the parent to ascertain how the child's impairment or disability affects the child's ability to function in an educational setting. A range of factors—both academic and nonacademic—can be considered in making this determination for each individual child. See 34 CFR §300.306(c). Even if a child is advancing from grade to grade or is placed in the regular educational environment for most or all of the school day, the group charged with making the eligibility determination still could determine that the child's impairment or condition adversely affects the child's educational performance because the child could not progress satisfactorily in the absence of specific instructional adaptations or supportive services, including modifications to the general education curriculum. 34 CFR §300.101(c) (regarding requirements for individual eligibility determinations for children advancing from grade to grade)." [OSEP Letter \(November 28, 2007\)](#).

"Part B does not necessarily require a school district to conduct a medical evaluation for the purpose of determining whether a child has ADD. If a public agency believes that a medical

OPERATING GUIDELINE:

OTHER HEALTH IMPAIRMENT

evaluation by a licensed physician is needed as part of the evaluation to determine whether a child suspected of having ADD meets the eligibility criteria of the OHI category, or any other disability category under Part B, the school district must ensure that this evaluation is conducted at no cost to the parents." *OSEP Letter to Williams* (March 14, 1994).

"If the school district believes that there are other effective methods for determining whether a child suspected of having ADD meets the eligibility requirements of the OHI category, or any other disability category under Part B, then it would be permissible to use qualified personnel other than a licensed physician to conduct the evaluation as long as all of the protections in evaluation procedures...are met." *OSEP Letter to Williams* (March 14, 1994).

"[T]he 'adversely affects a child's educational performance' standard is a subpart of the definition of 'other health impairment.' [Citation omitted.] Thus, establishing an adverse effect on educational performance demonstrates that A.D. has an 'other health impairment.'

"[H]owever, determining that a child has an 'other health impairment' only fulfills the first prong of the 'child with a disability' analysis under [IDEA]. A.D. must still fulfill the second prong by demonstrating that, by reason of his ADHD, he needs special education services. Therefore, the fact that A.D.'s ADHD adversely affects his educational performance does not necessarily mean that he is eligible for special education services under the IDEA.

"[T]he district court ... 'considered a variety of sources [in determining whether A.D. needed special education services], including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior...' [Citation omitted.] Therefore, in determining whether A.D. needs special education services by reason of his ADHD, the district court properly considered the unique facts and circumstances of this case." [Alvin ISD v. A.D., No. 06-41588 \(5th Cir. 2007\)](#).

The TEA provides additional guidance related to [eligibility criteria](#) for other health impairment on the Special Education website.

Through the implementation of the district policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the district ensures that when conducting an initial evaluation or a reevaluation of a child suspected of having another health impairment, the group of qualified professionals will conduct a full and individual evaluation to determine whether the child meets the eligibility criteria for special education services as a child with another health impairment as required by the IDEA and its accompanying federal regulations, State statutes and regulations.

OPERATING GUIDELINE:

SPECIFIC LEARNING DISABILITY

CATEGORY: FULL AND INDIVIDUAL EVALUATION
FRAMEWORK: [SPECIFIC LEARNING DISABILITY](#)

The evaluation for a specific learning disability is conducted in accordance with the Evaluation Procedures previously specified in that operating guideline.

A group of qualified professionals, as defined in the Evaluation Procedures operating guideline, must be gathered as the multi-disciplinary team collect and reviews evaluation data. For the purposes of an evaluation for SLD this team must also include, the student's general education teacher; a general education teacher qualified to teach a child of his or her age if the child does not have a general education teacher; or an individual qualified by TEA to teach a child his or her age for a child less than school age.

The student may be considered to be a child with an SLD if they do not achieve adequately for their age or meet the state approved grade level standards in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skills, reading fluency skills, reading comprehension skills, mathematics calculation, or mathematics problem solving and reasoning. This lack of adequate achievement should be indicated on multiple measures, such as in-class tests, grade average over time, norm and criterion referenced tests, statewide assessments, or a process based on the student's response to scientific, research-based intervention.

To ensure that underachievement in a student suspected of having an SLD is not due to lack of appropriate instruction in reading or mathematics the group must consider data that demonstrate that the child was provided appropriate reading and mathematics instruction in the regular education setting by qualified personnel and data based documentation of repeated assessments of achievement conducted at reasonable intervals reflecting formal evaluation of progress of the student during instruction.

PARTICIPATION IN A RESPONSE TO INTERVENTION PROCESS

RTI is high-quality instruction or tiered intervention strategies matched to individual needs of the student that have been demonstrated through scientific research and practice to result in high learning rates for most children.

If the child has participated in a process that assesses the child's response to scientific, research-based intervention, the documentation of the specific learning disability (SLD) determination of eligibility must contain a statement of the instructional strategies used and the child-centered data collected.

When using a process based on the student's response to intervention to determine SLD, the process must include repeated, curriculum based assessments of achievement, conducted at reasonable intervals, and reflecting progress of the student during classroom instruction. A finding that the student meets criteria for SLD must include a determination that the student does not make sufficient progress to meet age or State approved grade level standards when provided a process based on the student's response to scientific, research based intervention as indicated by the student's performance relative to the performance of the student's peers.

OPERATING GUIDELINE:

SPECIFIC LEARNING DISABILITY

PATTERN OF STRENGTHS AND WEAKNESSES

When applying the State's pattern of strengths and weaknesses model to determine SLD, the process must include a determination that the student exhibits a pattern of strengths and weaknesses in performance and/or achievement. The pattern must be relative to age, state approved grade level standards, or intellectual development as indicated by significant variance among specific areas of cognitive functioning or between areas of cognitive functioning and academic achievement.

EXCLUSIONARY FACTORS

In order for a determination of SLD eligibility, the group must provide documentation ensuring the findings are not primarily the result of:

- A visual, hearing, or motor disability
- Mental retardation
- Emotional disturbance
- Cultural factors
- Environmental or economic disadvantage
- Limited English proficiency

PERSONS RESPONSIBLE: Special Education Department Evaluation Personnel

TIMELINES: The specific learning disability eligibility written report will be completed within 60 calendar days from the date of written parental consent. The eligibility report must be updated no less than once every three year period following the initial evaluation.

MATERIALS: Student Intervention Team (SIT) documentation, Procedural Safeguards and receipt, "A Guide to the ARD Process" and receipt, Notice & Consent for Assessment, FIE Report, FIE Disability Report: Learning Disability

GUIDING PRINCIPLES"

Group of Qualified Professionals

"We believe this [flexibility under § 300.308(b)] allows decisions about the specific qualifications of the members to be made at the local level, so that the composition of the group may vary depending on the nature of the child's suspected disability, the expertise of local staff, and other relevant factors. For example, for a child suspected of having an SLD in the area of reading, it might be important to include a reading specialist as part of the eligibility group. However, for a child suspected of having an SLD in the area of listening comprehension, it might be appropriate for the group to include a speech-language pathologist with expertise in auditory processing disorders." 71 Fed. Reg. 46650 (August 14, 2006).

Observation

OPERATING GUIDELINE:

SPECIFIC LEARNING DISABILITY

"The person conducting the observation should be a member of the eligibility group because information from the observation will be used in making the eligibility determination. If information is available from an observation conducted as part of routine classroom instruction that is important for the eligibility group to consider, the eligibility group should include the person who conducted that routine classroom [observation]. This will eliminate redundant observations and save time and resources. Parental consent is not required for observations conducted as part of routine classroom instruction and monitoring of the child's performance before the child is referred for an evaluation." 71 Fed. Reg. 46659 (August 14, 2006).

"If an observation has not been conducted, or additional observation data are needed, the decision as to which person should conduct the observation is best left to members of the eligibility group, based on the type of information that is needed to make the eligibility determination and identify the child's needs. Parental consent is required for observations conducted after the child is suspected of having a disability and is referred for an evaluation." 71 Fed. Reg. 46659 (August 14, 2006).

"One commenter requested clarification regarding the definition of an 'appropriate' environment in which to conduct the observation of a child who is less than school age, as well as guidance in determining what such an environment would be for children who are out of school.... The eligibility group is in the best position to determine the environment appropriate for a child who is less than school age or out of school." 71 Fed. Reg. 46660 (August 14, 2006).

"One commenter requested clear guidance about the working relationship between the special education teacher and the general education teacher in conducting an observation.... We decline to provide specific guidance on the working relationship between the special education teacher and the general education teacher in conducting an observation because this relationship will necessarily vary depending on how classrooms are structured and teacher responsibilities assigned. Such decisions are best made at the local level. Generally, we would expect that the child's general education teacher would have data from routine classroom instruction and would work with the other members of the eligibility group to determine what additional data, if any, are needed to determine whether a child has an SLD. A special education teacher who is experienced in working with children with SLD, for example, might have suggestions on ways to structure a particular observation session to obtain any additional information that is needed, and may be able to assist the general education teacher in gathering the data." 71 Fed. Reg. 46660 (August 14, 2006).

Criteria

"[T]he evaluation of a child suspected of having a disability, including an SLD, must include a variety of assessment tools and strategies and cannot rely on any single procedure as the sole criterion for determining eligibility for special education and related services. This requirement applies to all children suspected of having a disability, including those suspected of having an SLD." 71 Fed. Reg. 46646 (August 14, 2006).

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"The first element in identifying a child with SLD should be a child's mastery of grade-level content appropriate for the child's age or in relation to State-approved grade-level standards, not abilities. This emphasis is consistent with the focus in the ESEA on the attainment of State-approved grade-level standards for all children. State-approved standards are not expressed as 'norms' but represent benchmarks for all children at each grade level. The performance of classmates and peers is not an appropriate standard if most children in a class or school are not meeting State-approved standards. Furthermore, using grade-based normative data to make this determination is generally not appropriate for children who have not been permitted to progress to the next academic grade or are otherwise older than their peers. Such a practice may give the illusion of average rates of learning when the child's rate of learning has been below average, resulting in retention. A focus on expectations relative to abilities or classmates simply dilutes expectations for children with disabilities." 71 Fed. Reg. 46652 (August 14, 2006).

"[I]f the use of a process based on the child's response to scientific, research-based intervention, is not required but is permitted by the LEA, a school would not have to wait until RTI is fully implemented in all schools in the LEA before using RTI as part of the identification of SLD. That is, if the LEA is allowing, but not requiring the use of RTI, and a particular school, using the criteria adopted by the State for determining whether the child has an SLD [as] identified under 34 CFR §300.8(c)(10), is implementing an RTI process, consistent with the LEA's guidelines, it would not have to wait until RTI is implemented in all schools in the LEA before it could use information from an RTI process as part of the identification of children with SLD." [OSEP Letter to Massanari \(September 24, 2007\)](#).

"...A public agency, including an LEA, must use the State criteria in determining whether a child has an SLD. Nothing in the final Part B regulations would prohibit an LEA, if consistent with the State criteria, from using multiple methods of identifying a child with an SLD, as part of a full and individual evaluation, or reevaluation, across schools or across levels (e.g., elementary school, middle school or high school)." [OSEP Letter to Massanari \(September 24, 2007\)](#); see also, [OSEP Letter to Zirkel \(August 15, 2007\)](#).

"We agree that failing a State assessment alone is not sufficient to determine whether a child has an SLD. However, failing a State assessment may be one factor in an evaluation considered by the eligibility group." 71 Fed. Reg. 46653 (August 14, 2006).

"States that change their eligibility criteria for SLD may want to carefully consider the reevaluation of children found eligible for special education services using prior procedures. States should consider the effect of exiting a child from special education who has received special education and related services for many years and how the removal of such supports will affect the child's educational progress, particularly for a child who is in the final year(s) of high school. Obviously, the group should consider whether the child's instruction and overall special education program have been appropriate as part of this process. If the special education instruction has been appropriate and the child has not been able to exit special education, this would be strong evidence that the child's eligibility needs to be maintained." 71 Fed. Reg. 46648 (August 14, 2006).

OPERATING GUIDELINE:

SPECIFIC LEARNING DISABILITY

The TEA provides additional guidance related to [eligibility criteria](#) for a specific learning disability on the Special Education website. [The Texas Center for Learning Disabilities](#) provides further information for LEAs.

RTI Model

“ [A]n evaluation of a child suspected of having a disability, including a specific learning disability, must include a variety of assessment tools and strategies and cannot rely on any single procedure as the sole criterion for determining eligibility for special education and related services.... An RTI process does not replace the need for a comprehensive evaluation, and the results of an RTI process may be one component of the information reviewed as part of the evaluation procedures required under 34 CFR §§300.304 and 330.305. Finally, the manner in which the State chooses to use RTI as one component of a comprehensive evaluation is left up to States.” [OSEP Letter to Zirkel \(March 6, 2007\)](#).

“RTI is only one component of the process to identify children in need of special education and related services. Determining why a child has not responded to research-based interventions requires a comprehensive evaluation.” 71 Fed. Reg. 46647 (August 14, 2006).

The TEA provides guidance for the [RTI Process](#). The Curriculum and IDEA Divisions collaborated to provide the [Response to Intervention Coordinating Council \(RtICC\) Guidance document](#). Additional information related to [Response to Intervention](#) is located on the Curriculum web page.

The Region 10 Education Service Center’s has a [Response to Intervention](#) website with resources including on [research-based peer reviewed interventions](#).

Pattern of Strengths and Weaknesses

“There is a substantial research base summarized in several recent consensus reports [citations omitted] that does not support the hypothesis that a discrepancy model by itself can differentiate children with disabilities and children with general low achievement.” 71 Fed. Reg. 46650 (August 14, 2006).

“The Department does not believe that an assessment of psychological or cognitive processing should be required in determining whether a child has an SLD. There is no current evidence that such assessments are necessary or sufficient for identifying SLD. Further, in many cases, these assessments have not been used to make appropriate intervention decisions. However, § 300.309(a)(2)(ii) permits, but does not require, consideration of a pattern of strengths or weaknesses, or both, relative to intellectual development, if the evaluation group considers that information relevant to an identification of SLD. In many cases, though, assessments of cognitive processes simply add to the testing burden and do not contribute to interventions. As summarized in the research consensus from the OSEP Learning Disability Summit (Bradley, Danielson, and Hallahan, 2002), ‘Although processing deficits have been linked to some SLD (e.g., phonological processing and reading), direct links with other processes have not been established.

OPERATING GUIDELINE:

SPECIFIC LEARNING DISABILITY

Currently, available methods for measuring many processing difficulties are inadequate. Therefore, systematically measuring processing difficulties and their link to treatment is not yet feasible * * *. Processing deficits should be eliminated from the criteria for classification * * *.' (p. 797). Bradley, R., Danielson, L., & Hallahan, D.P. (Eds.). (2002). *Identification of Learning Disabilities: Research to Practice*. Mahwah, NJ: Erlbaum." 71 Fed. Reg. 46651 (August 14, 2006).

"Intellectual development is included in § 300.309(a)(2)(ii) as one of three standards of comparison, along with age and State-approved grade-level standards. The reference to 'intellectual development' in this provision means that the child exhibits a pattern of strengths and weaknesses in performance relative to a standard of intellectual development such as commonly measured by IQ tests. Use of the term is consistent with the discretion provided in the Act in allowing the continued use of discrepancy models." 71 Fed. Reg. 46651 (August 14, 2006).

"[A]n assessment of intra-individual differences in cognitive functions does not contribute to identification and intervention decisions for children suspected of having an SLD. The regulations, however, allow for the assessment of intra-individual differences in achievement as part of an identification model for SLD. The regulations also allow for the assessment of discrepancies in intellectual development and achievement." 71 Fed. Reg. 46651 (August 14, 2006).

"Patterns of strengths and weaknesses commonly refer to the examination of profiles across different tests used historically in the identification of children with SLD." 71 Fed. Reg. 46654 (August 14, 2006).

"34 C.F.R. 300.309(a)(2)(i) specifically applies to failure of a child to make sufficient progress when using a RTI process. Therefore, 34 C.F.R. 300.309(a)(2)(ii), which references a child exhibiting a pattern of strengths and weaknesses, would apply to all other permissible methods of identifying a child with a specific learning disability." [OSEP Letter to Zirkel \(April 8, 2008\)](#).

Exclusionary Factors

"The identification of the effect of cultural factors on a child's performance is a judgment made by the eligibility group based on multiple sources of information, including the home environment, language proficiency, and other contextual factors gathered in the evaluation." 71 Fed. Reg. 46655 (August 14, 2006).

Determinant Factor

"Sections 300.306(b)(1)(i) and (ii), consistent with section 614(b)(5)(A) and (B) of the Act, specifically state that children should not be identified for special education if the achievement problem is due to lack of appropriate instruction in reading or mathematics. This issue is especially relevant to SLD because lack of appropriate instruction in these areas most commonly leads to identifying a child as having an SLD. All children should be provided with appropriate instruction provided by qualified personnel. This is an important

OPERATING GUIDELINE:

SPECIFIC LEARNING DISABILITY

tenet of the Act and the ESEA. Both the Act and the ESEA focus on doing what works as evidenced by scientific research and providing children with appropriate instruction delivered by qualified teachers." 71 Fed. Reg. 46655 (August 14, 2006).

"Eligibility is contingent on the ability of the LEA to provide appropriate instruction. Determining the basis of low achievement when a child has been given appropriate instruction is the responsibility of the eligibility group." 71 Fed. Reg. 46656 (August 14, 2006).

"Whether a child has received 'appropriate instruction' is appropriately left to State and local officials to determine. Schools should have current, data-based evidence to indicate whether a child responds to appropriate instruction before determining that a child is a child with a disability. Children should not be identified as having a disability before concluding that their performance deficits are not the result of a lack of appropriate instruction." 71 Fed. Reg. 46656 (August 14, 2006).

"Programs that claim to be research-based, but which are not based on sound scientific research, should not be considered research-based instruction by a State or LEA." 71 Fed. Reg. 46656 (August 14, 2006).

"As part of the evaluation, the eligibility group must consider whether the child received appropriate instruction from qualified personnel. For children who attend private schools or charter schools or who are home schooled, it may be necessary to obtain information from parents and teachers about the curricula used and the child's progress with various teaching strategies. The eligibility group also may need to use information from current classroom-based assessments or classroom observations. On the basis of the available information, the eligibility group may identify other information that is needed to determine whether the child's low achievement is due to a disability, and not primarily the result of lack of appropriate instruction. The requirements for special education eligibility or the expectations for the quality of teachers or instructional programs are not affected, and do not differ, by the location or venue of a child's instruction." 71 Fed. Reg. 46656 (August 14, 2006).

"What is important is that the group making the eligibility decision has the information that it needs to rule out that the child's underachievement is a result of a lack of appropriate instruction. That could include evidence that the child was provided appropriate instruction either before, or as a part of, the referral process." 71 Fed. Red. 46656 (August 14, 2006).

"The information referred to in 34 C.F.R. §300.309(b)(2)[data-based documentation] may be collected as a part of the evaluation process, or may be existing information from the regular instructional program of a school or LEA. It must be reviewed and weighed by the evaluation group.... We believe that this information is necessary to ensure that a child's underachievement is not due to lack of appropriate instruction." [OSEP Letter to Zirkel \(April 8, 2008\)](#).

"Data-based documentation refers to an objective and systematic process of documenting a child's progress. This type of assessment is a feature of strong instruction in reading and math and is consistent with § 300.306(b)(1)(i) and (ii) and section 614(b)(5)(A) and (B) of

OPERATING GUIDELINE:

SPECIFIC LEARNING DISABILITY

the Act, that children cannot be identified for special education if an achievement problem is due to lack of appropriate instruction in reading or math." 71 Fed. Red. 46657 (August 14, 2006).

"Instructional models vary in terms of the frequency and number of repeated assessments that are required to determine a child's progress." 71 Fed. Red. 46657 (August 14, 2006).

"Children should not be identified as having SLD if there is no evidence of appropriate instruction." 71 Fed. Red. 46657 (August 14, 2006).

"While the results of a child's performance on assessments under the ESEA may be included as data documenting a child's progress, relying exclusively on data from Statewide assessments under the ESEA would likely not meet the requirement for repeated assessments at 'reasonable intervals,' as required by these regulations. It is possible that a State could develop other assessments tied to the State approved test that would meet these requirements." 71 Fed. Red. 46657 (August 14, 2006).

"Instructional models vary in terms of the length of time required for the intervention to have the intended effect on a child's progress. It would not be appropriate for the Department to establish timelines or the other requirements proposed by the commenters in Federal regulations, because doing so would make it difficult for LEAs to implement models specific to their local school districts. These decisions are best left to State and local professionals who have knowledge of the instructional methods used in their schools." 71 Fed. Red. 46658 (August 14, 2006).

"The Department believes that good instruction depends on repeated assessments of a child's progress. This allows teachers to make informed decisions about the need to change their instruction to meet the needs of the child, and also provides parents with information about their child's progress so that they can support instruction and learning at home. Parents should be informed if there are concerns about their child's progress and should be aware of the strategies being used to improve and monitor their child's progress." 71 Fed. Red. 46658 (August 14, 2006).

"We understand the commenters' requests for more specific details on timelines and measures of adequate progress. However, as noted above, these decisions are best left to professionals who have knowledge about the instructional models and strategies used in their States and districts." 71 Fed. Red. 46658 (August 14, 2006).

Through the implementation of the district policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the district ensures that when conducting an initial evaluation or a reevaluation of a child suspected of having a specific learning disability, the group of qualified professionals will conduct a full and individual evaluation to determine whether the child meets the eligibility criteria for special education services as a child with a specific learning disability as required by the IDEA and its accompanying federal regulations, State statutes and regulations.

LEA: Brownwood ISD
County District No.: 025-902

OPERATING GUIDELINE:

SPECIFIC LEARNING DISABILITY

OPERATING GUIDELINE:

SPEECH OR LANGUAGE IMPAIRMENT

CATEGORY: FULL AND INDIVIDUAL EVALUATION
FRAMEWORK: [SPEECH OR LANGUAGE IMPAIRMENT](#)

The evaluation for a speech or language impairment is conducted in accordance with the Evaluation Procedures previously specified in that operating guideline. Referral and initial evaluation procedures are also detailed.

When considering students who have speech and language impairments, members of the multi-disciplinary team, including a certified speech and language therapist or licensed speech/language pathologist will determine if:

- the child has a communication disorder, such as stuttering, impaired articulation, a language impairment, or voice impairment;
- the speech or language impairment adversely affects the child’s educational performance; and
- the child needs special education services.

The determination will be made utilizing the *Speech and Language Eligibility Guidelines* developed by the ESC Region XV SLP Task Force, based on the TSHA SI Eligibility Template.

PERSONS RESPONSIBLE: Special Education Department Evaluation Personnel

TIMELINES: The FIE will be completed within 60 calendar days from the date of written parental consent. The FIE must be updated no less than once every three year period following the initial evaluation.

MATERIALS: Procedural Safeguards and receipt, “A Guide to the ARD Process” and receipt, Notice & Consent for Assessment, FIE Report, FIE Disability Report: Speech Impairment, Speech and Language Eligibility Guidelines – *ESC Region XV*

GUIDING PRINCIPLES

“Whether a child’s disability ‘adversely affects a child’s educational performance’ is considered for all disability categories in 34 CFR §300.8(c), because, to be eligible, a child must qualify as a child with a disability under 34 CFR §300.8 and need special education because of a particular impairment or condition. Although the phrase ‘adversely affects educational performance’ is not specifically defined, the extent of the impact that the child’s impairment or condition has on the child’s educational performance is a decisive factor in a child’s eligibility determination under Part B. We believe that the evaluation and eligibility determination processes described in our response to question 1 above are sufficient for the group of qualified professionals and the parent to ascertain how the child’s impairment or disability affects the child’s ability to function in an educational setting. A range of factors—both academic and nonacademic—can be considered in making this determination for each individual child. See 34 CFR §300.306(c). Even if a child is advancing from grade to grade or is placed in the regular educational environment for most or all of the school day, the group charged with making the eligibility determination still could determine that the child’s impairment or condition adversely affects the child’s educational performance because the child could not progress satisfactorily in the absence of specific instructional adaptations or supportive services, including modifications to the general education curriculum. 34 CFR

OPERATING GUIDELINE:

SPEECH OR LANGUAGE IMPAIRMENT

§300.101(c) (regarding requirements for individual eligibility determinations for children advancing from grade to grade).” [OSEP Letter \(November 28, 2007\)](#).

“Whether a speech and language impairment adversely affects a child’s educational performance must be determined on a case-by-case basis, depending on the unique needs of a particular child and not based only on discrepancies in age or grade performance in academic subject areas.” [OSEP Letter to Clarke \(March 8, 2007\)](#).

Through the implementation of the district policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the district ensures that when conducting an initial evaluation or a reevaluation of a child suspected of having a speech or language impairment, the group of qualified professionals will conduct a full and individual evaluation to determine whether the child meets the eligibility criteria for special education services as a child with a speech or language impairment as required by the IDEA and its accompanying federal regulations, State statutes and regulations.

OPERATING GUIDELINE:

TRAUMATIC BRAIN INJURY

CATEGORY: FULL AND INDIVIDUAL EVALUATION
FRAMEWORK: [TRAUMATIC BRAIN INJURY](#)

When considering students who may receive special education eligibility under the disability category of traumatic brain injury, the group of qualified professionals must include a licensed physician. The physician must complete the FIE Disability Report: Traumatic Brain Injury for review by the ARD committee.

PERSONS RESPONSIBLE: Special Education Department Evaluation Personnel

TIMELINES: The FIE will be completed within 60 calendar days from the date of written parental consent. The FIE must be updated no less than once every three year period following the initial evaluation.

MATERIALS: Procedural Safeguards and receipt, "A Guide to the ARD Process" and receipt, Notice & Consent for Assessment, FIE Report, FIE Disability Report: Traumatic Brain Injury

GUIDING PRINCIPLES

"Whether a child's disability 'adversely affects a child's educational performance' is considered for all disability categories in 34 CFR §300.8(c), because, to be eligible, a child must qualify as a child with a disability under 34 CFR §300.8 and need special education because of a particular impairment or condition. Although the phrase 'adversely affects educational performance' is not specifically defined, the extent of the impact that the child's impairment or condition has on the child's educational performance is a decisive factor in a child's eligibility determination under Part B. We believe that the evaluation and eligibility determination processes described in our response to question 1 above are sufficient for the group of qualified professionals and the parent to ascertain how the child's impairment or disability affects the child's ability to function in an educational setting. A range of factors—both academic and nonacademic—can be considered in making this determination for each individual child. See 34 CFR §300.306(c). Even if a child is advancing from grade to grade or is placed in the regular educational environment for most or all of the school day, the group charged with making the eligibility determination still could determine that the child's impairment or condition adversely affects the child's educational performance because the child could not progress satisfactorily in the absence of specific instructional adaptations or supportive services, including modifications to the general education curriculum. 34 CFR §300.101(c) (regarding requirements for individual eligibility determinations for children advancing from grade to grade)." [OSEP Letter \(November 28, 2007\)](#).

Additional information related to [Traumatic Brain Injury](#) can be found on the Special Education section of the TEA website.

Through the implementation of the district policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the Sonora ISD ensures that when conducting an initial evaluation or a reevaluation of a child suspected of having a

OPERATING GUIDELINE:

TRAUMATIC BRAIN INJURY

traumatic brain injury, the group of qualified professionals will conduct a full and individual evaluation to determine whether the child meets the eligibility criteria for special education services as a child with a traumatic brain injury as required by the IDEA and its accompanying federal regulations, State statutes and regulations.

OPERATING GUIDELINE: VISUAL IMPAIRMENT (including BLINDNESS)

CATEGORY: FULL AND INDIVIDUAL EVALUATION
FRAMEWORK: [VISUAL IMPAIRMENT \(including BLINDNESS\)](#)

When considering students who have visual impairments, the educational diagnostician will collaborate with a professional certified in the education of students with visual impairments in completing the disability eligibility report to determine:

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.

The required certification for this position is Certified Teacher of the Visually Impaired.

The educational diagnostician will remain the case manager of this student and will collect the appropriate reports from the following sources:

- A. Interagency Eye Examination, completed by licensed ophthalmologist or optometrist;
- B. Functional Vision Evaluation/Learning Media, completed by a certified teacher of the visually impaired.

PERSONS RESPONSIBLE: Special Education Department Evaluation Personnel

TIMELINES: The FIE will be completed within 60 calendar days from the date of written parental consent. The FIE must be updated no less than once every three year period following the initial evaluation.

MATERIALS: Visual Impairment Eligibility Report Part A – Determination of Impairment & Educational Need/Interagency Eye Examination Report, Part B – Functional Vision Evaluation/Learning Media Assessment

GUIDING PRINCIPLES:

“Whether a child’s disability ‘adversely affects a child’s educational performance’ is considered for all disability categories in 34 CFR §300.8(c), because, to be eligible, a child must qualify as a child with a disability under 34 CFR §300.8 and need special education because of a particular impairment or condition. Although the phrase ‘adversely affects educational performance’ is not specifically defined, the extent of the impact that the child’s impairment or condition has on the child’s educational performance is a decisive factor in a child’s eligibility determination under Part B. We believe that the evaluation and eligibility determination processes described in our response to question 1 above are sufficient for the group of qualified professionals and the parent to ascertain how the child’s impairment or disability affects the child’s ability to function in an educational setting. A range of factors—both academic and nonacademic—can be considered in making this determination for each individual child. See 34 CFR §300.306(c). Even if a child is advancing from grade to grade or is placed in the regular educational environment for most or all of the school day, the group charged with making the eligibility determination still could determine that the child’s

OPERATING GUIDELINE: VISUAL IMPAIRMENT (including BLINDNESS)

impairment or condition adversely affects the child’s educational performance because the child could not progress satisfactorily in the absence of specific instructional adaptations or supportive services, including modifications to the general education curriculum. 34 CFR §300.101(c) (regarding requirements for individual eligibility determinations for children advancing from grade to grade).” [OSEP Letter \(November 28, 2007\)](#).

“Section 614(d)(3)(B)(iii) of the Act requires instruction in Braille to be provided unless the IEP Team determines that instruction in Braille or in the use of Braille is not appropriate for the child. However, the Act does not require a clinical low vision evaluation, and we do not believe it would be appropriate to include such a requirement in the regulations. Whether a clinical low vision evaluation is conducted is a decision that should be made by the child’s IEP Team.” 71 Fed. Reg. 46683-46684 (August 14, 2006).

The TEA provides guidance for [Services to Students who are Blind or Visually Impaired \(VI\)](#).

Education Service Center Region 11 provides statewide leadership for the [Training and Technical Assistance for Visually Impaired Program](#) decentralized function. As the state lead, ESC Region 11 facilitates the coordination of 20 regional Education Service Center visual impairment specialists to develop a team approach in supporting students with visual impairments.

The Brownwood ISD follows the [Educating Students with Visual Impairments in Texas: Guidelines and Standards](#) document.

Through the implementation of the district policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the district ensures that when conducting an initial evaluation or a reevaluation of a child suspected of having a visual impairment including blindness, the group of qualified professionals will conduct a full and individual evaluation to determine whether the child meets the eligibility criteria for special education services as a child with a visual impairment including blindness as required by the IDEA and its accompanying federal regulations, State statutes and regulations.

OPERATING GUIDELINE:

RULE OF CONSTRUCTION

CATEGORY: ADMISSION, REVIEW AND DISMISSAL (ARD) COMMITTEE

FRAMEWORK: [RULE OF CONSTRUCTION](#)

PERSONS RESPONSIBLE: ARD Committee Members

TIMELINES: Annual review of IEP and all subsequent review ARD meetings

MATERIALS: Procedural Safeguards and receipt, Guide to the ARD Process, ARD Documents

METHODS: An ARD committee is established for all children with a disability. Additional information may be included in a child's IEP beyond what is required in the framework.

GUIDING PRINCIPLES:

"There is nothing in the Act that limits States and LEAs from adding elements to the IEP, so long as the elements are not inconsistent with the Act or these regulations, and States do not interpret the Act to require these additional elements. Section 300.320(d), consistent with section 614(d)(1)(A)(ii)(I) of the Act, does not prohibit States or LEAs from requiring IEPs to include information beyond that which is explicitly required in section 614 of the Act. However, if a State requires IEPs to include information beyond that which is explicitly required in section 614 of the Act, the State must identify in writing to its LEAs and the Secretary that it is a State-imposed requirement and not one based on the Act or these regulations, consistent with § 300.199(a)(2) and section 608(a)(2) of the Act." 71 Fed. Reg. 46669 (August 14, 2006).

A [glossary of terms](#) is available through the Legal Framework for the Child-Centered Special Education Process.

Through the implementation of the district's policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the district ensures that an ARD committee is established for each child for whom a full and individual evaluation has been conducted and each eligible child with a disability. The IEP developed through the ARD process must conform to the requirements of State and federal law.

OPERATING GUIDELINE:

ARD COMMITTEE MEMBERSHIP

CATEGORY: ADMISSION, REVIEW AND DISMISSAL (ARD) COMMITTEE
FRAMEWORK: [ARD COMMITTEE MEMBERSHIP](#)

Each campus principal shall ensure that the ARD/IEP team for each child with a disability includes:

1. The parents of the child with the disability.
2. At least one regular education teacher of the child if the child is, or may be, participating in the regular education environment.
3. At least one special education teacher of the child, or if appropriate, at least one special education provider of the child.
4. A representative of the public agency. BISD defines a representative of the public agency to be the principal, assistant principal, the Director of Special Education or another person who has been approved by the superintendent to perform this duty.
5. An individual who can interpret the instructional implications of evaluation results, who may be one of the other members of the team.
6. At the discretion of the parent or the agency, other individuals who have educationally relevant knowledge of the child, including related services personnel as appropriate.
7. If appropriate, the child with the disability.
8. When appropriate, a teacher of the hearing impaired a teacher of the visually impaired, a member of the LPAC committee, and a representative from career and technology.

PERSONS RESPONSIBLE: Campus Administrator, Special Education Department
Evaluation Personnel

MATERIALS: Special Ed. Manager forms

"As a general matter, if a public agency fails to fulfill the notice requirements in 34 CFR §300.322, the parent may request that the IEP Team meeting be rescheduled." [OSEP Redacted Letter \(March 31, 2008\)](#).

LEA Representative

"A public agency may determine which specific staff member will serve as the agency representative in a particular IEP Team meeting, so long as the individual meets these requirements. It is important, however, that the agency representative have the authority to commit agency resources and be able to ensure that whatever services are described in the IEP will actually be provided. However, we do not need to regulate in the manner suggested, as the public agency will be bound by the IEP that is developed at an IEP Team meeting." 71 Fed. Reg. 46671 (August 14, 2006).

Special Education Teacher or Provider

"Section 612(d)(1)(B)(iii) of the Act requires that not less than one special education teacher of the child (or where appropriate, not less than one special education provider of the child) be included on the IEP Team. Decisions as to which particular teacher(s) or special education provider(s) are members of the IEP Team and whether IEP Team

OPERATING GUIDELINE:

ARD COMMITTEE MEMBERSHIP

meetings are held at the end of the school year or some other time, are best left to State and local officials to determine, based on the needs of the child.” 71 Fed. Reg. 46670 (August 14, 2006).

“[T]he special education teacher or provider who is a member of the child’s IEP Team should be the person who is, or will be, responsible for implementing the IEP. For example, if the child’s disability is a speech impairment, the special education teacher or special education provider could be the speech language pathologist. We do not believe that further clarification is needed.” 71 Fed. Reg. 46670 (August 14, 2006).

Child with a Disability

“Section 614(d)(1)(B)(vii) of the Act clearly states that the IEP Team includes the child with a disability, whenever appropriate. Generally, a child with a disability should attend the IEP Team meeting if the parent decides that it is appropriate for the child to do so. If possible, the agency and parent should discuss the appropriateness of the child’s participation before a decision is made, in order to help the parent determine whether or not the child’s attendance would be helpful in developing the IEP or directly beneficial to the child, or both.” 71 Fed. Reg. 46671 (August 14, 2006).

“Section 300.321(b)(1) requires the public agency to invite a child with a disability to attend the child’s IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals, regardless of whether the child has reached the age of majority. However, until the child reaches the age of majority under State law, unless the rights of the parent to act for the child are extinguished or otherwise limited, only the parent has the authority to make educational decisions for the child under Part B of the Act, including whether the child should attend an IEP Team meeting.” 71 Fed. Reg. 46671 (August 14, 2006).

Quality Analysis looks at the “degree to which [the] student participated in [the] ARD and development of [the] IEP.” “Student participation goes beyond sitting in the ARD meeting. Documentation needs to reflect what the student did in the context of the meeting.” [TEA Data Collection for State Performance Plan Indicator 13 Student Folder/IEP Review Chart](#).

[A Student’s Guide to the IEP](#) is written especially for students with disabilities by the National Information Center for Children and Youth with Disabilities (NICHCY 2002).

Other Individuals with Knowledge or Special Expertise

“If the public agency has invited someone with knowledge or special expertise about the child and failed to inform the parents of that person’s attendance, the parents may request that the meeting be rescheduled until the public agency provides the parent the required notice of ‘who will be in attendance.’ Alternatively, the public agency may choose to conduct the IEP Team meeting without that individual’s attendance to avoid rescheduling the meeting.” [OSEP Redacted Letter \(March 31, 2008\)](#).

OPERATING GUIDELINE:

ARD COMMITTEE MEMBERSHIP

"[I]t should be noted that if a public agency wishes to invite officials from another agency, such as officials of the child welfare agency that are not representing the child, the public agency must obtain parental consent for the individual to participate in the IEP Team meeting because confidential information about the child from the child's education records would be shared at the meeting." 71 Fed. Reg. 46669 (August 14, 2006).

"With regard to the recommendation that the notice state that the parent has a legal right to require an IEP Team member to participate in an IEP Team meeting, it is important to emphasize that it is the public agency that determines the specific personnel to fill the roles for the public agency's required participants at the IEP Team meeting. A parent does not have a legal right to require other members of the IEP Team to attend an IEP Team meeting. Therefore, if a parent invites other public agency personnel who are not designated by the LEA to be on the IEP Team, they are not required to attend." 71 Fed. Reg. 46674 (August 14, 2006).

Transition Services Participants

"The decision of whether it would be appropriate to invite other agencies rests with the public agency and the parents or the child who has reached the age of majority, provided that the parents or the child who has reached the age of majority consents to the invitation. If the parent or the child who has reached the age of majority refuses to consent to invite a representative of a participating agency that is likely to be responsible for providing or paying for transition services, to a child's IEP Team meeting where transition will be considered, conducted in accordance with 34 CFR §300.320(b), the public agency may not invite a representative of that agency to attend the child's IEP Team meeting." [OSEP Letter to Caplan \(March 17, 2008\)](#).

"[I]n determining whether a public agency must invite another agency to an IEP Team meeting conducted under 34 CFR §300.320(b), in general, you may wish to consider such factors as whether a purpose of the IEP Team meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals, whether there is a participating agency, other than the public agency responsible for providing a free appropriate public education to the child, that is likely to be responsible for providing or paying for the child's transition services, and whether the consent of the parents or the child who has reached the age of majority has been provided for the other agency's participation at the IEP Team meeting conducted in accordance with 34 CFR §300.320(b)." [OSEP Letter to Caplan \(March 17, 2008\)](#).

Attendance and Excusal

"Section 614(d)(1)(C) of the Act allows a parent of a child with a disability and the LEA to agree that the attendance of an IEP Team member at an IEP Team meeting, in whole or in part, is not necessary under certain conditions. Allowing IEP Team members to be excused from attending an IEP Team meeting is intended to provide additional flexibility to parents in scheduling IEP Team meetings and to avoid delays in holding an IEP Team meeting when an IEP Team member cannot attend due to a scheduling conflict." 71 Fed. Reg. 46673 (August 14, 2006).

OPERATING GUIDELINE:

ARD COMMITTEE MEMBERSHIP

"We cannot eliminate the different procedures for different types of excusals because section 614(d)(1)(C) of the Act clearly differentiates between circumstances in which parental consent is required and when an agreement is required to excuse an IEP member from attending an IEP Team meeting." 71 Fed. Reg. 46673 (August 14, 2006).

"When an IEP Team member's area is not being modified or discussed, § 300.321(e)(1), consistent with section 614(d)(1)(C) of the Act, provides that the member may be excused from the meeting if the parent and LEA agree in writing that the member's attendance is not necessary. We believe it is important to give public agencies and parents wide latitude about the content of the agreement and, therefore, decline to regulate on the specific information that an LEA must provide in a written agreement to excuse an IEP Team member from attending the IEP Team meeting when the member's area of the curriculum or related services is not being modified or discussed." 71 Fed. Reg. 46674 (August 14, 2006).

"When an IEP Team member's area is being modified or discussed, §300.321(e)(2), consistent with section 614(d)(1)(C)(ii) of the Act, requires the LEA and the parent to provide written informed consent. Consistent with §300.9, consent means that the parent has been fully informed in his or her native language, or other mode of communication, and understands that the granting of consent is voluntary and may be revoked at any time. The LEA must, therefore, provide the parent with appropriate and sufficient information to ensure that the parent fully understands that the parent is consenting to excuse an IEP Team member from attending an IEP Team meeting in which the member's area of the curriculum or related services is being changed or discussed and that if the parent does not consent the IEP Team meeting must be held with that IEP Team member in attendance." 71 Fed. Reg. 46674 (August 14, 2006).

"We do not believe it is necessary to require consent or a written agreement between the parent and the public agency to excuse individuals who are invited to attend IEP Team meetings at the discretion of the parent or the public agency because such individuals are not required members of an IEP Team." 71 Fed. Reg. 46675 (August 14, 2006).

Through the implementation of the district policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the district ensures ARD committees are duly constituted.

CATEGORY: ADMISSION, REVIEW AND DISMISSAL (ARD) COMMITTEE
FRAMEWORK: [PARENT PARTICIPATION](#)

Through the implementation of the district policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the district ensures parent participation in ARD committee meetings.

PERSONS RESPONSIBLE: Special Education Department Evaluation Personnel

METHODS:

Notification of ARD Committee Meetings

ARD meetings are scheduled at mutually agreeable times. Parents are notified a minimum of five school days prior to the ARD meeting, with the option to reschedule, as needed. ARD meetings must be scheduled to meet timelines. If parents are unable to attend, parents are given the option to participate via phone or to schedule a conference after the ARD meeting to discuss the ARD decisions.

A minimum of three attempts are made to notify before ARD is held without parent.

Detailed parent logs are kept regarding all notices for ARD meetings and parent responses.

Parents with a Native Language other than English will be provided an interpreter.

All correspondence will be sent to parents

TIMELINES: ARD notices sent to parent at least 5 school days prior to the ARD.

GUIDING PRINCIPLES:

"We also believe that State and local officials are in the best position to determine how far in advance parents must be notified of a meeting, as this will vary based on a number of factors, including, for example, the distance parents typically have to travel to the meeting location and the availability of childcare." 71 Fed. Reg. 46670 (August 14, 2006).

"Part B does not address times when public agencies can schedule IEP Team meetings. Although Part B does not prohibit public agencies from scheduling IEP Team meetings in the evening, it does not require that they do so. Therefore, it is not unreasonable for public agencies to schedule meetings of the IEP Team only during regular school hours or regular business hours because it is likely that these times are most suitable for public agency personnel to attend these meetings." [OSEP Letter to Thomas \(June 3, 2008\)](#).

"On the other hand, there may be circumstances where a parent cannot attend an IEP team meeting that is scheduled during the day because their employment situation restricts their availability during school hours or business hours. In such a circumstance, public agencies should be flexible in scheduling IEP Team meetings to accommodate reasonable requests from parents. Where public agencies and parents cannot schedule meetings to accommodate their respective scheduling needs, public agencies must take other steps to ensure parent participation, consistent with 34 CFR §300.322(c). These include individual or conference telephone calls or videoconferencing, consistent with 34 CFR §300.328 (relating to alternative means of meeting participation)." [OSEP Letter to Thomas \(June 3, 2008\)](#).

"In the situation prompting your inquiry, we recognize that the difficulty arises because the parent's expert is unable to attend an IEP Team meeting during regular school hours or regular business hours, and the parent believes their expert possesses important information which must be shared at the meeting. Nonetheless, we do not believe that Part B requires the public agency to schedule the IEP Team meeting outside of regular school hours or regular business hours to accommodate participation of the parents' expert. In this situation, the parent and public agency could consider using alternative means to ensure that the information of the parents' expert is communicated to the IEP Team if the public agency is unable, for administrative or contractual reasons, to schedule the IEP Team meeting outside of school hours or regular business hours. Even though it may be the practice of this public agency to routinely conduct parent-teacher conferences in the evening, we do not believe this practice alone would compel the public agency to schedule IEP Team meetings in the evening." [OSEP Letter to Thomas \(June 3, 2008\)](#).

"Only when a public agency is unable to convince a parent to participate in an IEP Team meeting may the meeting be conducted without a parent." 71 Fed. Reg. 46679 (August 14, 2006).

"One commenter recommended that the regulations permit parents to provide input through a written report in order to document that the parents provided input into their child's education.... Parents are free to provide input into their child's IEP through a written report if they so choose." 71 Fed. Reg. 46678 (August 14, 2006).

"With respect to a draft IEP, we encourage public agency staff to come to an IEP Team meeting prepared to discuss evaluation findings and preliminary recommendations. Likewise, parents have the right to bring questions, concerns, and preliminary recommendations to the IEP Team meeting as part of a full discussion of the child's needs and the services to be provided to meet those needs. We do not encourage public agencies to prepare a draft IEP prior to the IEP Team meeting, particularly if doing so would inhibit a full discussion of the child's needs. However, if a public agency develops a draft IEP prior to the IEP Team meeting, the agency should make it clear to the parents at the outset of the meeting that the services proposed by the agency are preliminary recommendations for review and discussion with the parents. The public agency also should provide the parents with a copy of its draft proposals, if the agency has developed them, prior to the IEP Team meeting so as to give the parents an opportunity to review the recommendations of the public agency prior to the IEP Team meeting, and be better able to engage in a full discussion of the proposals for the IEP. It is not permissible for an agency to have the final IEP completed before an IEP Team meeting begins." 71 Fed. Reg. 46678 (August 14, 2006).

"New 300.322(f) (proposed § 300.322(e)) requires the public agency to give the parent a copy of the child's IEP at no cost to the parent. We believe the specific timeframe in which the public agency provides a copy of the IEP to the parent is best left to the public agency to determine." 71 Fed. Reg. 46687 (August 14, 2006).

OPERATING GUIDELINE:

ARD COMMITTEE MEETING

CATEGORY: ADMISSION, REVIEW AND DISMISSAL (ARD) COMMITTEE
FRAMEWORK: [ARD COMMITTEE MEETING](#)

Each campus principal shall ensure that the ARD/IEP team for each child with a disability includes:

1. The parents of the child with the disability.
2. At least one regular education teacher of the child if the child is, or may be, participating in the regular education environment.
3. At least one special education teacher of the child, or if appropriate, at least one special education provider of the child.
4. A representative of the public agency who has been defined by local guidelines to be the principal, assistant principal, Special Education Director or another person who has been approved by the superintendent to perform this duty.
5. An individual who can interpret the instructional implications of evaluation results, who may be one of the other members of the team.
6. At the discretion of the parent or the agency, other individuals who have educationally relevant knowledge of the child, including related services personnel as appropriate.
7. If appropriate, the child with the disability.
8. When appropriate, a teacher of the hearing impaired, a teacher of the visually impaired, a member of the LPAC committee, and a representative from career and technology.

PERSONS RESPONSIBLE: Campus Administrator, Special Education Department
Evaluation Personnel

MATERIALS:

"If the child fails to make progress under the IEP, it should be reviewed and the reasons for the lack of progress be identified. The IEP, if necessary, should be revised to assist the child in achieving his/her annual goals, and services needed to achieve those goals are included in the IEP, including both special education and related services." [OSEP Letter to Morris \(August 15, 2007\)](#).

The Texas Education Agency (TEA) provides [Guidance on ARD Guide Production and Required Dissemination](#).

About A Guide to the Admission, Review, and Dismissal Process (ARD Guide)

The *ARD Guide* is produced to implement Texas Education Code (TEC) Section 26.0081 requiring the TEA to create a comprehensive, easily understood document which explains the individualized education program (IEP) process for a student in a special education program. Additionally, the *ARD Guide* incorporates a parent's rights and responsibilities concerning the ARD process.

OPERATING GUIDELINE:

ARD COMMITTEE MEETING

The *ARD Guide* contains information that parents need to effectively participate in an ARD committee meeting for their child. The *ARD Guide* is intended to be a companion document to, not a replacement for, the *Notice of Procedural Safeguards*, which identifies parents' rights and responsibilities in federal law. The purpose of the ARD Guide is to encourage a common understanding for parents, school personnel, and communities of the IEP process for a student with disabilities.

The *ARD Guide* is intended to be a living document. In order for it to reflect timely and accurate information, the *ARD Guide* will be reviewed on a regular basis. The most current version of the *ARD Guide* will contain a production date on the cover and in the footer of the document.

Dissemination

LEAs are required to provide the most current version of the *ARD Guide* to parents of students with disabilities prior to the first ARD committee meeting or upon a parent's request. LEAs are responsible for the initial dissemination of the *ARD Guide*; however, once a parent receives a copy of the *ARD Guide*, updated versions may be provided by the LEA upon request.

Documentation

Schools are encouraged to maintain a record of dissemination in the child's eligibility folder in case of compliance review through the State's monitoring system.

Language Requirements

Currently, the *ARD Guide* is available in English and Spanish only.

Location on the Web

The current version of the *ARD Guide* is available on the Region 18 Education Service Center's [Legal Framework IDEA 2004](#) Web site.

Production

Education service centers (ESCs) will continue to assist the State in the production of the *ARD Guide*. However, if an ESC cannot provide copies to a local education agency (LEA), the LEA (school district or charter school) is responsible for producing and disseminating the current version of the *ARD Guide* to parents available on the Region 18 Education Service Center's [Legal Framework IDEA 2004](#) Web site.

Technical Assistance

LEAs may contact their [regional ESC](#) for the most current copies of the *ARD Guide* or produce their own copies for dissemination. Parents should contact their school district or charter school for a copy of updates to the *ARD Guide*. Parents can contact the following Parent Resources to help with understanding the special education process or call the TEA's toll free Parent Information Line.

Parent Resources

[Texas Project FIRST](#) (Families Information Resources Support and Training) is a project of the Texas Education Agency and is committed to providing accurate and consistent information to parents & families of students with disabilities.

The [Partners Resource Network](#) (PRN) is a non-profit agency that operates the statewide network of federally funded Parent Training and Information Centers (PTI's) in Texas. The programs and services of PRN are based on the concept of parents helping parents. The mission of PRN is to empower parents of children and youth with disabilities in their roles as parents, decision makers, and advocates for their children and to promote partnerships among parents and professionals.

TEA Toll Free Parent Information Line: 1-800-252-9668

This toll free message line is reserved for parents and other family members who have questions about student rights and regulatory requirements as they relate to special education complaint investigations, mediations, and due process hearings. Calls are returned by trained professionals during normal business hours. For Individuals who are Deaf or Hard of Hearing: TTY Number: (512) 475-3540 Relay Texas 7-1-1.

Through the implementation of the BISD policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, BISD ensures that the ARD committee meetings are held as required by the IDEA and its accompanying federal regulations, State statutes and regulations.

CATEGORY: ADMISSION, REVIEW AND DISMISSAL (ARD) COMMITTEE
FRAMEWORK: [PRESENT LEVELS](#)

Through the implementation of the district policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the district ensures that the IEP of each child with a disability includes a statement of present levels as required by the IDEA and its accompanying federal regulations, State statutes and regulations.

To determine Present Levels of Academic Achievement and Functional Performance (PLAAFPs) data is collected from general education and special education teachers, benchmark testing, state assessment data, and current FIE.

PERSONS RESPONSIBLE: general education and special teachers

TIMELINES: reviewed at annual ARDS

MATERIALS: Special Education forms

GUIDING PRINCIPLES:

The ARD present levels statement must include how the child's disability affects the child's involvement and progress in the general education curriculum; or how the disability affects the preschool child's participation in appropriate activities.

Several commenters asked the U.S. Department of Education to state that not every IEP must include a statement about the child's "functional performance" and "functional goals." The U.S. Department of Education pointed out that the language is in the statute, and therefore, cannot be omitted. Thus the IEP must always include a statement of "the child's present levels of academic achievement and functional performance." 71 Fed. Reg. 46662 (August 14, 2006).

"It is not necessary to include a definition of 'functional' in these regulations because we believe it is a term that is generally understood to refer to skills or activities that are not considered academic or related to a child's academic achievement. Instead, 'functional' is often used in the context of routine activities of everyday living." 71 Fed. Reg. 4661 (August 14, 2006).

OPERATING GUIDELINE: SPECIAL FACTORS – TRANSITION SERVICES

CATEGORY: ADMISSION, REVIEW AND DISMISSAL (ARD) COMMITTEE
FRAMEWORK: [SPECIAL FACTORS](#)

Through the implementation of the district’s policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the district ensures that transition services are addressed in the IEP of a child with a disability as required by the IDEA and its accompanying federal regulations, State statutes and regulations.

PERSONS RESPONSIBLE: Diagnostician, school counselor

TIMELINES: Beginning not later than the first individualized education program (IEP) to be in effect when the child turns 16, or younger if determined appropriate by the admission, review and dismissal (ARD) committee, and updated annually thereafter, the ARD committee must address transition services as part of the IEP.

MATERIALS: Transition supplement, Academic Achievement Record, Four Year Plan, Special Education Vocational Assessment Information, Transition student materials: i.e. College Planning Guide and Financial Aid for Texas Students, grade level College Checklists, College: The Next Step, and district vocational assessment information: i.e. PLAN, ASVB, OASIS-3, Explore

METHODS: The ARD committee members review the student’s individual needs, taking into account the student’s strengths, preferences, interest, academic history, state assessment history, and student’s post-secondary goals to determine the transition services and academic plan best suited for the student.

Post secondary goals are developed to address training, employment, education and, when appropriate, independent living.

If the child does not attend the ARD meeting where transition services are discussed the district ensures the child’s preferences and interests are considered by reviewing:

- Student’s vocational assessment
- 4 year plan and graduation option
- Course preferences for the next year

GUIDING PRINCIPLES:

“We do not believe it is necessary to change the definition of transition services because the definition is written broadly to include a range of services, including vocational and career training that are needed to meet the individual needs of a child with a disability. The definition clearly states that decisions regarding transition services must be made on the basis of the child’s individual needs, taking into account the child’s strengths, preferences, and interests. As with all special education and related services, the student’s IEP Team determines the transition services that are needed to provide FAPE to a child with a disability based on the needs of the child, not on the disability category or severity of the

disability. We do not believe further clarification is necessary.” 71 Fed. Reg. 46579 (August 14, 2006).

“[T]he only area in which postsecondary goals is not required in the IEP is in the area of independent living skills. Goals in the area of independent living are required only if appropriate. It is up to the child’s IEP Team to determine whether IEP goals related to the development of independent living skills are appropriate and necessary for the child to receive FAPE.” 71 Fed. Reg. 46668 (August 14, 2006).

The Office for Civil Rights (OCR) has published a pamphlet titled [Students with Disabilities Preparing for Postsecondary Education: Know Your Rights and Responsibilities](#). “More and more high school students with disabilities are planning to continue their education in postsecondary schools, including vocational and career schools, two- and four-year colleges, and universities.... The information in this pamphlet, provided by the Office for Civil Rights (OCR) in the U. S. Department of Education, explains the rights and responsibilities of students with disabilities who are preparing to attend postsecondary schools. This pamphlet also explains the obligations of a postsecondary school to provide academic adjustments, including auxiliary aids and services, to ensure the school does not discriminate on the basis of disability.” See also, [OCR Dear Parent Letter \(March 16, 2007\)](#).

The National Secondary Transition Technical Assistance Center (NSTTAC) is funded by the U.S. Department of Education’s Office of Special Education Programs (OSEP) for the purpose of assisting states to build capacity to support and improve transition planning, services, and outcomes for youth with disabilities. NSTTAC offers resources for [Secondary Transition Evidence-based Practices](#).

The TEA provides [Secondary Transition Guidance](#).

Texas Statewide High School Transition is a decentralized function of the TEA. Education Service Center Region 11 provides statewide leadership for the [Statewide High School Transition Network](#). As the state lead, Region 11 Education Service Center the coordination of the 20 regional Education Service Center transition specialists' activities in an effort to meet the needs of high school students receiving special education services across the state of Texas.

In collaboration with the network members, Region 11 Education Service Center is responsible for coordination of:

- a state-level needs assessment process;
- determination of state priorities,
- development of the network plan; and
- evaluation of the effectiveness of statewide activities and services.

The professional development and technical assistance provided by the Statewide Transition Network focuses on building capacity within the school to respond appropriately to both federal and state legislation. The Network works to ensure that students receiving special education services have the supports in place to help them reach their post-school outcomes/goals for successfully functioning in the adult world.

Additionally, Region 11 Education Service Center serves as the first point of contact for education service centers and provides information and guidance when requested by the Texas Education Agency.

Resources for [Students](#) and [Parents](#) are available through the network including [Parents and the Transition Process: Where Do You Fit into the Picture?](#)

State Performance Plan Indicator 13

The Individuals with Disabilities Education Act (IDEA) was reauthorized on December 3, 2004 and its provisions became effective on July 1, 2005. In conjunction with the reauthorization, the U. S. Department of Education through the Office of Special Education Programs required states to develop six-year State Performance Plans in December, 2005 around 20 indicators, on which data will be submitted annually (beginning February 2007) in Annual Performance Reports.

The intent of the thirteenth indicator is to provide states with a way to measure how well they are doing in addressing high school transition, a process which facilitates the movement of students toward their postsecondary goals. The indicator is as follows: "Percent of youth aged 16 and above with an individualized education program (IEP) that includes coordinated, measurable, annual IEP goals and transition services that will reasonably enable the student to meet the post-secondary goals."

The TEA has developed a [Checklist for Measurement of Indicator 13](#). The district completes the Checklist for Measurement of Indicator 13 as required by the TEA. The TEA has also developed an [Indicator 13 Student Folder/IEP Review Chart](#) to be used as guidance for the Checklist for Measurement of Indicator 13.

OPERATING GUIDELINE:

SPECIAL FACTORS - AUTISM

CATEGORY: ADMISSION, REVIEW AND DISMISSAL (ARD) COMMITTEE
FRAMEWORK: SPECIAL FACTORS

PERSONS RESPONSIBLE: Diagnostician, LSSP

TIMELINES: At least one time per year, the Autism Supplement must be reviewed.

MATERIALS: Autism Supplement

METHODS: During the ARD committee meeting, the Autism Supplement's 11 areas are reviewed.

GUIDING PRINCIPLES:

The TEA provides [Commissioner's Rules Guidance](#) regarding the content of the IEP for children with autism. Additionally, through the network of the 20 regional Education Service Centers (ESCs) around the state and in conjunction with the TEA, the Texas Statewide Leadership for [Autism](#) provides a mechanism to access training, technical assistance, support, and resources for educators who serve students with autism.

"The [Texas Autism Resource Guide for Effective Teaching](#) is designed to assist schools in developing practices from initial referral to program development and implementation with a strong emphasis on research-based and peer-reviewed strategies. As such, this guide contains six sections relative to autism spectrum disorders (AU): (a) eligibility vs. diagnosis, (b) educational implications, (c) evaluation, (d) interventions, (e) index, and (f) a glossary. Information is presented in alphabetical order; item order reflects no endorsement or mandate. Further, decisions about which assessments and interventions to use are left to qualified individuals or committees charged with reviewing and creating programs for students with AU." From the [Texas Statewide Leadership for Autism](#) which provides a mechanism to access training, technical assistance, support, and resources for educators who serve students with autism.

Through the implementation of the district's policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the district ensures that the ARD committee considers the needs of a child with autism as required by the IDEA and its accompanying federal regulations, State statutes and regulations.

OPERATING GUIDELINE: SPECIAL FACTORS – DEAF OR HARD OF HEARING

CATEGORY: ADMISSION, REVIEW AND DISMISSAL (ARD) COMMITTEE
FRAMEWORK: [SPECIAL FACTORS](#)

At each annual ARD committee meeting, the Certified Teacher for the Deaf and Hard of Hearing will complete a draft of the ARD/IEP Supplement for Students with Auditory Impairments for presentation at the annual ARD committee meeting. Attendance of the Certified Teacher for the Deaf and Hard of Hearing is required at every review ARD committee meeting.

The ARD committee will consider:

1. the student’s language and communication needs;
2. the student’s opportunities for direct communications with peers and professional personnel in the child’s language and communication mode;
3. the student’s academic level;
4. the student’s full range of needs, including opportunities for direct instruction in the child’s language and communication mode.

Brownwood ISD will provide each parent with the state-adopted form that contains written information about programs offered by State institutions.

PERSONS RESPONSIBLE: Special Education Department Evaluation Personnel, Certified Teacher for the Deaf and Hard of Hearing

TIMELINES: The “ARD/IEP Supplement for Students with Auditory Impairments” will be updated and reviewed at least once per year, at the Annual ARD.

MATERIALS: ARD/IEP Supplement for Students with Auditory Impairments, Receipt of Texas School for the Deaf Information

GUIDING PRINCIPLES:

“A few commenters expressed concern that the regulations regarding special factors for the IEP Team to consider in developing IEPs imply that particular methods, strategies, and techniques should be used.... The requirements in §300.324 are not intended to imply that a particular method, strategy, or technique should be used to develop a child’s IEP. For example, while §300.324(a)(2)(i) requires the IEP Team to consider the use of positive behavioral interventions and supports, and other strategies, it does not specify the particular interventions, supports, or strategies that must be used.” 71 Fed. Reg. 46683 (August 14, 2006).

[Texas School for the Deaf](#) (TSD), located in Austin, is the oldest continuously operating publicly funded school in Texas. Since 1857, over 10,000 students have graced the halls of TSD. In addition to educating students who are deaf and hard of hearing, TSD now serves as a resource center on deafness for students, parents, professionals and others throughout the state.

OPERATING GUIDELINE: SPECIAL FACTORS – DEAF OR HARD OF HEARING

[Deaf Services](#) manages the operation of the TEA’s Regional Day School Program for the Deaf, performs all activities required to maintain a statewide program for students who are deaf or hard of hearing, and provides leadership to local regional day schools for the deaf in the planning, implementation and operation of comprehensive education programs for students who are deaf or hard of hearing.

[Statewide Leadership](#)

Through the ESC State Leadership Project, ESC-20 provides professional development and technical assistance to the statewide ESC Deaf and Hard of Hearing (ESC DHH) Network contacts as they assist school districts with the development and implementation of comprehensive instructional programs that are standards-based and results-driven. Through collaboration with the statewide Access to the General Curriculum Network, the ESC DHH Network helps local programs meet the unique needs of students who are deaf or hard of hearing across the continuum of placement options.

Through the implementation of the district’s policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the district ensures that in the case of a child who is deaf or hard of hearing, the ARD committee considers the language and communication needs, opportunities for direct communications with peers and professional personnel in the child’s language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child’s language and communication mode as required by the IDEA and its accompanying federal regulations, State statutes and regulations.

CATEGORY: ADMISSION, REVIEW AND DISMISSAL (ARD) COMMITTEE
FRAMEWORK: SPECIAL FACTORS

Through the implementation of the district's policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the district ensures that the ARD committee considers the special factor of behavior as required by the IDEA and its accompanying federal regulations, State statutes and regulations.

In the case of a child whose behavior impedes the child's learning or that of others, the district will use of positive behavioral interventions and supports, and other strategies, to address that behavior. Any behavior management technique and/or discipline management practice will be implemented in such a way as to protect the health and safety of the student and others.

If a student is experiencing behavior problems in the regular classroom, the school district should consider whether supplementary aides and services would allow the student to remain in the regular classroom. The ARD committee must justify a more restrictive placement and explain why the student cannot be successful in the regular classroom.

For students currently served by special education behavior is addressed at every ARD.

Texas Behavior Support Initiative (TBSI):

Staff will receive training on a full continuum of positive behavioral intervention strategies and professionally accepted practices and standards for behavior management. The TBSI training will provide tools to assist districts/campuses in complying with the documentation and notification requirements for the use of restraint and time-out.

Each campus will train a core team including:

- campus administrator or designee;
- general or special education personnel likely to use restraint; and
- general or special education personnel who implement time-out based on requirements established in a student's IEP.

Personnel who meet the one of the following criteria must be trained within 30 school days:

- Time-out - new or additional personnel called upon to implement time-out based on requirements established in a student's IEP
- Restraint - personnel called upon to use restraint in an emergency and who have not received prior training

PERSONS RESPONSIBLE: Campus Administrator; District Behavior Specialist

TIMELINES: Annual training opportunities will be provided

MATERIALS: TBSI training materials

METHODS:

- Campus administrators will provide staff development/training for staff in positive behavior supports.

- The District Behavior Intervention Specialist will provide annual training in Severe Behavior: Prevention and De-Escalation Techniques that will include a list of critical attributes for training on physical restraint procedures.

STUDENTS CURRENTLY SERVED BY SPECIAL EDUCATION

BEHAVIOR INTERVENTION PLAN:

A student whose behavior is impeding his ability to learn in the regular education setting needs a Behavior intervention Plan (BIP) to try to maintain that placement before a more restrictive setting is considered.

The purpose of the BIP is to identify and possibly control challenging situations and teach replacement skills and adaptive behaviors in order to get the basic needs of the student met.

Methods: A functional behavioral review is conducted to gather information that will become the basis for developing or revising behavior goals and objectives. If a functional behavior assessment is needed the ARD committee will convene and parent permission will be obtained.

PERSONS RESPONSIBLE: Special Education Department Personnel, District Staff

MATERIALS: Functional Behavior Review Data, Functional Behavior Assessment, and existing Behavior Intervention Plan

When Behavior Results in Disciplinary Action:

School personnel may remove a child with a disability who violates a student code of conduct from his or her current placement for 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 (see guiding principles below).

METHODS:

On the date on which the decision is made to make a removal that constitutes a change of placement, the principal must:

- Notify the parents of that decision; and
- Provide the parents the procedural safeguards notice.

PERSON RESPONSIBLE: Campus Principal

MATERIALS: Incident Reports, Restraint Report, Notice of Procedural Safeguards

Manifestation Determination:

A manifestation determination must be made within 10 school days of any decision to make a CHANGE OF PLACEMENT of a child with a disability because of a violation of a code of student conduct.

METHODS:

The diagnostician will schedule an ARD committee meeting. The committee will review all relevant information in the student's file, including the child's IEP, discipline reports, any teacher observations, and any relevant information provided by the parents.

The conduct is a manifestation of the child's disability if the committee determines that either one of the following conditions is met:

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

School personnel may apply the relevant disciplinary procedures that would be applied to children with disabilities in the same manner and for the same duration as the procedures that would be applied to children without disabilities, if:

- In the MANIFESTATION DETERMINATION review, the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability;
- SERVICES DURING PERIODS OF REMOVAL are provided; and
- Notification of a CHANGE OF PLACEMENT is given.

Person responsible: Diagnostician, Campus Administrator, ARD Committee members, parent, student

Timeline: Diagnostician will send 5 day notice and schedule the ARD unless parent will waive the 5 days and agree to meet sooner.

Materials: Special Disciplinary Procedures/Functional Behavioral Review and/or Assessment, Special Discipline Plan for Administrative Intervention, Incident Reports, Restraint Report, Alternative Placement Supplement/Manifestation Determination

When Behavior is a Manifestation

If the admission, review, and dismissal (ARD) committee determines in a MANIFESTATION DETERMINATION review that the conduct was the direct result of the failure of the local education agency (LEA) to implement the individualized education program (IEP), the LEA must take immediate steps to remedy those deficiencies

If the ARD committee determines in a MANIFESTATION DETERMINATION review that the conduct was a manifestation of the child's disability, the ARD committee must either:

- Conduct a functional behavioral assessment (FBA) and Implement a behavioral intervention plan (BIP) for the child (unless completed previously); or
- Review and revise the existing the BIP; and
- Return the child to the placement from which the child was removed: Except as provided in the SPECIAL CIRCUMSTANCES framework; unless the parent and the LEA

agree to a change of placement as part of the modification of the behavioral intervention plan.

When Behavior is not a Manifestation

For a disciplinary change in placement that would exceed 10 consecutive school days, if the admission, review, and dismissal (ARD) committee determines in a MANIFESTATION DETERMINATION review that the conduct was not a manifestation of the child's disability:

- School personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities;
- Except that SERVICES DURING PERIODS OF REMOVAL must be provided.

Special circumstances

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child—

- Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the state educational agency (SEA) or the local educational agency (LEA):
 - The term "dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length
- Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA:
 - Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V;
 - Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law; or
- Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the SEA or the LEA:
 - The term "serious bodily injury" means bodily injury which involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

If the removal is for more than 10 consecutive school days, the LEA must comply with the CHANGE OF PLACEMENT framework and conduct a MANIFESTATION DETERMINATION review.

School personnel may remove a student to an interim alternative educational setting (IAES) without regard to whether the behavior is determined to be a manifestation of the child's disability as long as the removal is for not more than 45 school days if the behavior is a manifestation of the child's disability; and SERVICES DURING PERIODS OF REMOVAL must be determined and provided.

GUIDING PRINCIPLES:

"Section 300.324(a)(2)(i) follows the specific language in section 614(d)(3)(B)(i) of the Act and focuses on interventions and strategies, not assessments, to address the needs of a child whose behavior impedes the child's learning or that of others. Therefore, while conducting a functional behavioral assessment (FBA) typically precedes developing positive behavioral intervention strategies, we do not believe it is appropriate to include this language in § 300.324(a)(2)(i)." 71 Fed. Reg. 46683 (August 14, 2006).

"Under 34 CFR §300.324(a)(2)(i), if a child's behavior impedes his or her learning or that of others, the IEP Team must 'consider the use of positive behavioral interventions and supports, and other strategies to address that behavior.' If an FBA is being conducted for the purpose of determining whether the positive behavioral interventions and supports set out in the current IEP for a particular child with a disability would be effective in enabling the child to make progress toward the child's IEP goals/objectives, or to determine whether the behavioral component of the child's IEP would need to be revised, we believe that the FBA would be considered a reevaluation under Part B for which parental consent would be required under 34 CFR §300.300(c)." OSEP Letter to Christiansen (February 9, 2007).

"The child's unique needs are of paramount importance in determining what behavioral interventions and supports or behavioral management strategies are appropriate for a child with a disability and must be included in the child's IEP." OSEP Letter (March 17, 2008).

"The final decision on the provision of special education and related services for any child with a disability rests with the IEP Team, including the child's parents. IDEA and the final Part B implementing regulations' require that the IEP Team consider, in the case of a child whose behavior impedes the child's learning or that of others, the use of positive behavioral interventions and supports, and other strategies, to address that behavior. 20 U.S.C. 1414(d)(3)(B)(i) and (C), and 34 CFR §300.324(a)(2)(i) . Thus, while the Act requires that an IEP Team consider the use of positive behavioral interventions and supports, and as such, emphasizes and encourages the use of such supports, it does not contain a flat prohibition on the use of aversive behavioral interventions. Whether to allow IEP Teams to consider the use of aversive behavioral interventions is a decision left to each State." OSEP Letter to Trader (October 29, 2006).

The Texas Behavior Support Initiative (TBSI), established in 2001 in response to Senate Bill 1196, is designed to build capacity in Texas schools for the provision of positive behavioral support (PBS) to all students. The goal of PBS is to enhance the capacity of schools to educate all students, especially students with challenging behaviors, by adopting a sustained, positive, preventative instructional approach to school-wide discipline and behavior management. This approach focuses on teaching and encouraging positive school-

wide behavioral expectations and increasing school capacity to support sustained use of empirically validated practices.

The TBSI training modules are designed to assist campus teams in developing and implementing a wide range of behavior strategies and prevention-based interventions. These skills help educators establish school-wide, classroom and individual student level systems of support. The TBSI: School-wide PBS Project and TBSI Interventions for Statewide with severe behavior were developed based on needs assessment data collected during the 2002-03 school year.

"The Office of Special Education Programs (OSEP) funds a National Technical Assistance Center on Positive Behavior and Intervention Supports (Center). The Center was established to address the behavioral and discipline systems needed for successful learning and social development of students. The Center provides capacity-building information and technical support about behavioral systems to assist states and districts in the design of effective school-wide models. The Center also provides technical assistance in evidence based practices related to FBA. You may access the Center on-line at <http://www.pbis.org/>." *OSEP Letter to Janssen (June 5, 2008)*.

The Texas Collaborative for Emotional Development in Schools (TxCEDS) is a statewide project of the Texas Education Agency's Division of IDEA Coordination. The project is part of the Texas Continuous Improvement Process (TCIP). Under the leadership of the Region 4 Education Service Center, the project was initiated during the 2006-2007 school year.

The purpose of the TxCEDS project is to develop a guiding policy that promotes the well-being and mental health of children in Texas schools through the development of integrated and comprehensive support programs and services.

The scope of the project is to:

1. Develop a policy statement regarding school-based mental health services in Texas
2. Identify barriers to student learning and performance—including educational and psychosocial problems, external stressors, and psychological disorders
3. Identify existing and emerging evidence-based interventions and systems of support
4. Propose a system for collecting and reporting campus-based information regarding barriers to student learning and performance, particularly as they relate to (a) mental health needs, and (b) existing educational and community-based systems of support and interventions
5. Identify specific academic and behavioral data components needed to guide decision-making for the project

Change of Placement:

School personnel must consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for a child with a disability who violates a code of student conduct.

- a change of placement occurs if :
 - The removal is for more than 10 consecutive school days; or
 - The child has been subjected to a series of removals that constitute a pattern.

The child has been subjected to a series of removals that constitute a pattern when:

- The series of removals total more than 10 school days in a school year;
- The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
- Additional factors to be considered are: The length of each removal; The total amount of time the child has been removed; and The proximity of the removals to one another.

The LEA determines, on a case by case basis, whether a pattern of removals constitutes a change of placement.

Restraint:

Physical restraint does not include the use of physical contact or appropriately prescribed adaptive equipment to promote normative body positioning and/or physical functioning; 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; limited physical contact or appropriately prescribed adaptive equipment to prevent a student from engaging in ongoing, repetitive self-injurious behaviors; or seat belts and other safety equipment used to secure students during transportation.

- Students will not be confined in a locked box, locked closet, or other specially designed locked space as either a discipline management practice or a behavior management technique. This section does not prevent a student's locked, unattended confinement in an emergency situation while awaiting the arrival of law enforcement personnel if:
 - (1) the student possesses a weapon; and
 - (2) the confinement is necessary to prevent the student from causing bodily harm to the student or another person.
- A school employee, volunteer, or independent contractor may use restraint as is necessary to address the emergency situation and be discontinued at the point in which the emergency no longer exist.
- 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.
- 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.
- 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
- Training on use of restraint must include prevention and de-escalation techniques and provide alternatives to the use of restraint; and
- All trained personnel must receive instruction in current professionally accepted practices and standards regarding behavior management and the use of restraint.

- On the day restraint is utilized, the campus administrator or designee must be notified verbally or in writing regarding the use of restraint;
- On the day restraint is utilized, a good faith effort must be made to verbally notify the parent(s) regarding the use of restraint
- 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
- Written documentation regarding the use of restraint must be placed in the student's special education eligibility folder in a timely manner so the information is available to the admission, review, and dismissal (ARD) committee when it considers the impact of the student's behavior on the student's learning and/or the creation or revision of a behavioral intervention plan (BIP); and
- Cumulative data regarding the use of restraint must be reported through the Public Education Information Management System (PEIMS).

Time-Out

"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.

Use of time-out

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

(1) Physical force or threat of physical force shall not be used to place a student in time-out.

(2) Time-out may only be used in conjunction with an array of positive behavior intervention strategies and techniques and must be included in the student's IEP and/or BIP if it is utilized on a recurrent basis to increase or decrease a targeted behavior.

(3) Use of time-out shall not be implemented in a fashion that precludes the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.

Training on use of time-out

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

(1) General or special education personnel who implement time-out based on requirements established in a student's IEP and/or BIP must be trained in the use of time-out.

(2) Newly-identified personnel called upon to implement time-out based on requirements established in a student's IEP and/or BIP must receive training in the use of time-out within 30 school days of being assigned the responsibility for implementing time-out.

(3) Training on the use of time-out must be provided as part of a program which addresses a full continuum of positive behavioral intervention strategies, and must address the impact of time-out on the ability of the student to be involved in and progress in the

general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.

(4) All trained personnel shall receive instruction in current professionally accepted practices and standards regarding behavior management and the use of time-out. Necessary documentation or data collection regarding the use of time-out, if any, must be addressed in the IEP or BIP. The ARD committee must use any collected data to judge the effectiveness of the intervention and provide a basis for making determinations regarding its continued use.

Services During Periods of Removal

A local educational agency (LEA) is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.

REMOVALS FOR MORE THAN 10 CUMULATIVE DAYS THAT ARE NOT A CHANGE OF PLACEMENT

After a child with disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a CHANGE OF PLACEMENT:

- School personnel, in consultation with at least one of the child 's teachers, determine the extent to which services are needed for a free appropriate public education (FAPE):
 - to enable the child to continue to participate in the general education curriculum, although in another setting;
 - To enable the child to progress toward meeting the goals set out in the child's individualized education program IEP; and
- Services may be provided in an interim alternative educational setting (IAES).

REMOVALS THAT ARE A CHANGE OF PLACEMENT

The LEA must comply with the MANIFESTATION DETERMINATION framework.

WHEN BEHAVIOR IS NOT A MANIFESTATION of the child's disability, or when a child with a disability is removed from the child's current placement due to SPECIAL CIRCUMSTANCES, the ARD COMMITTEE must determine:

- Educational services for a FAPE which may be provided in an interim alternative educational setting (IAES):
 - To enable the child to continue to participate in the general education curriculum, although in another setting;
 - To enable the child to progress toward meeting the goals set out in the child's IEP;
- As appropriate, a functional behavioral assessment;

OPERATING GUIDELINE:

SPECIAL FACTORS - BEHAVIOR

- Behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur; and
 - The IAES.
-

OPERATING GUIDELINE: SPECIAL FACTORS – BLIND OR VISUALLY IMPAIRED

CATEGORY: ADMISSION, REVIEW AND DISMISSAL (ARD) COMMITTEE
FRAMEWORK: [SPECIAL FACTORS](#)

At each annual ARD committee meeting, the Certified Teacher for the Visually Impaired will complete a draft of the ARD/IEP Supplement for Students with Visual Impairments for presentation at the annual ARD committee meeting. Attendance of the Certified Teacher for the Visually Impaired is required at every review ARD committee meeting.

The ARD committee must provide for reading and writing instruction in Braille and the use of Braille that is sufficient to enable the child to communicate with the same level of proficiency as other children of comparable ability who are at the same grade, or determine that instruction in Braille or the use of Braille is not appropriate.

In addition, the ARD committee shall:

1. provide a detailed description of the arrangements made to provide the child 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 serious visual impairments; the student's opportunities for direct communications with peers and professional personnel in the child's language and communication mode;
2. set forth the plans and arrangements made for contacts with and continuing services to the child beyond regular school hours to ensure the child learns the skills and receives the training specified above;
3. for a child who is functionally blind, specify the appropriate learning medium based on the assessment;
4. indicate that the child has been provided a detailed explanation of the various service resources available in the community and throughout the State; and
5. provide each parent with the state-adopted form that contains written information about programs offered by state institutions.

Brownwood ISD will seek consent from parents to release confidential student information to the deaf-blind census and/or VI registration at each annual ARD committee meeting.

PERSONS RESPONSIBLE: Special Education Department Evaluation Personnel, Certified Teacher for the Visually Impaired

TIMELINES: The "ARD/IEP Supplement for Students with Visual Impairments" will be updated and reviewed at least once per year, at the Annual ARD.

MATERIALS: ARD/IEP Supplement for Students with Visual Impairments, Receipt of Texas School for the Blind Information, Consent to Release Confidential Information for the Deaf-Blind Census and VI Registration

OPERATING GUIDELINE: SPECIAL FACTORS – BLIND OR VISUALLY IMPAIRED

GUIDING PRINCIPLES:

"Some commenters recommended that the special factors for a child who is blind or visually impaired include a requirement for a clinical low vision evaluation to determine whether the child has the potential to utilize optical devices for near and distance information before providing instruction in Braille and the use of Braille.... Section 614(d)(3)(B)(iii) of the Act requires instruction in Braille to be provided unless the IEP Team determines that instruction in Braille or in the use of Braille is not appropriate for the child. However, the Act does not require a clinical low vision evaluation, and we do not believe it would be appropriate to include such a requirement in the regulations. Whether a clinical low vision evaluation is conducted is a decision that should be made by the child's IEP Team." 71 Fed. Reg. 46683-46684 (August 14, 2006).

State Guidance

[Auditory and/or Visual Impairments Memorandum of Understanding](#)

The purposes of the AI/VI MOU is to define roles and responsibilities between the [DARS Early Childhood Intervention \(ECI\)](#) and the TEA within the respective federal and state mandates; enhance interagency collaboration and relationships; and coordinate an effective system of activities, policies and procedures between the TEA and the ECI which guide and support the development and implementation of services to infants and toddlers, birth through two, who have auditory and/or visual impairments.

State Plans

[State Plan for Students with Visual Impairments \(VI\)](#)

The Texas State Plan for Students with Visual Impairments (State VI Plan) is intended to be a tool for use in identifying needs, setting priorities, and guiding the development and provision of services for students with visual impairments and deaf-blindness.

[State Performance Plan \(SPP\)](#)

The SPP contains 20 performance and compliance indicators related to the implementation of IDEA. These 20 indicators are aligned to five monitoring priorities set by the U.S. Department of Education Office of Special Education Programs (USDE/OSEP). The five monitoring priorities are: (1) Free Appropriate Public Education in the Least Restrictive Environment, (2) Disproportionality, (3) Child Find, (4) Effective Transition, and (5) General Supervision.

State Resources

[Educating Students with Visual Impairments in Texas: Guidelines and Standards](#)

[The Texas School for the Blind and Visually Impaired \(TSBVI\)](#)

The Texas School for the Blind and Visually Impaired (TSBVI) serves as a special public school in the continuum of statewide placements for students who have a visual impairment. It is also a statewide resource to parents of these children and professionals who serve them.

OPERATING GUIDELINE: SPECIAL FACTORS – BLIND OR VISUALLY IMPAIRED

[Texas Department of Assistive and Rehabilitative Services \(DARS\) Division for Blind Services \(DBS\)](#)

The DARS Division for Blind Services (DBS) assists blind or visually impaired individuals and their families. DBS envisions a Texas where people who are blind or visually impaired reach their goals and enjoy the same opportunities as other Texans to pursue independence and employment.

[DARS Early Childhood Intervention \(ECI\)](#)

ECI is a statewide program for families with children, birth to three, with disabilities and developmental delays. ECI supports families to help their children reach their potential through developmental services.

[Statewide Leadership for students with visual impairments Region 11 Education Service Center: Training and Technical Assistance for Visually Impaired Program](#)

ESC 11 provides leadership, staff development, technical assistance and support to assist Texas school districts meet the educational needs of students who have visual impairments.

National Resources

[American Printing House for the Blind](#)

The American Printing House for the Blind (APH) is the world's largest nonprofit organization creating educational, workplace, and independent living products and services for people who are visually impaired.

Through the implementation of the Brownwood ISD policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the Brownwood ISD ensures that in the case of a child who is blind or visually impaired, the ARD committee considers the special factors as required by the IDEA and its accompanying federal regulations, State statutes and regulations. The Brownwood ISD follows the [Educating Students with Visual Impairments in Texas: Guidelines and Standards](#) document.

OPERATING GUIDELINE: SUPPLEMENTARY AIDS AND SERVICES, SPECIAL EDUCATION, RELATED SERVICES

CATEGORY: ADMISSION, REVIEW AND DISMISSAL (ARD) COMMITTEE
FRAMEWORK: [SUPPLEMENTARY AIDS AND SERVICES, SPECIAL EDUCATION, RELATED SERVICES](#)

Through the implementation of the district's policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the district ensures the IEP of each child with a disability includes a statement of supplementary aids and services, special education and related services as required by the IDEA and its accompanying federal regulations, State statutes and regulations.

PERSONS RESPONSIBLE: Special Education Department Evaluation Personnel

TIMELINES: Annual ARD and review ARDS as appropriate

MATERIALS: Procedural Safeguards and receipt, "A Guide to the ARD Process" and receipt, Notice & Consent for Assessment, FIE Report, Disability Eligibility Reports, Related Service Eligibility Reports, State Assessment Reports, Teacher information and competencies, ARD forms

METHODS:

The admission, review and dismissal (ARD) committee will review the FIE Report, Disability Eligibility Reports, Related Service Eligibility Reports, state assessment information, teacher information and competencies to determine needed special education services, related services, and supplementary aids and services to be provided to the child, or on behalf of the child.

The ARD committee will determine needed program modifications/accommodations or supports for school personnel that will be provided to the child to enable the child to be involved in and make progress in the general education curriculum and be afforded an equal opportunity to participate in extracurricular and other nonacademic activities including, to the maximum extent appropriate, in nonacademic settings.

For students who do not perform satisfactorily on the grade level state assessment, the ARD committee must determine the manner in which the child will participate in an accelerated instruction program designed to enable the child to attain a standard of annual growth on the basis of the child's individualized education program (IEP).

For a child in a grade impacted by the Student Success Initiative, each time the child fails to perform satisfactorily on the designated grade level state assessment, the ARD committee must determine the manner in which the child will participate in accelerated instruction in the applicable subject area, and after the third attempt, the ARD committee must determine whether the child will be promoted or retained.

The ARD committee must determine the frequency and duration for any related service. This will include:

OPERATING GUIDELINE:

**SUPPLEMENTARY AIDS AND SERVICES, SPECIAL
EDUCATION, RELATED SERVICES**

- The projected date for the beginning of the services and modifications;
- The anticipated frequency of those services and modifications; and
- The anticipated duration of those services and modifications

The ARD committee must determine the anticipated location of those services and modifications. The campus location must be as close as possible to the child's home unless the IEP requires some other arrangement; the child is educated at the campus location that he or she would attend if nondisabled.

GUIDING PRINCIPLES:

Based on Peer-Reviewed Research to the Extent Practicable

"Peer-reviewed research' generally refers to research that is reviewed by qualified and independent reviewers to ensure that the quality of the information meets the standards of the field before the research is published. However, there is no single definition of 'peer reviewed research' because the review process varies depending on the type of information to be reviewed. We believe it is beyond the scope of these regulations to include a specific definition of 'peer-reviewed research' and the various processes used for peer reviews." 71 Fed. Reg. 46664 (August 14, 2006).

"The phrase 'to the extent practicable,' as used in this context, generally means that services and supports should be based on peer-reviewed research to the extent that it is possible, given the availability of peer-reviewed research. We do not believe further clarification is necessary." 71 Fed. Reg. 46665 (August 14, 2006).

"We decline to require all IEP Team meetings to include a focused discussion on research-based methods or require public agencies to provide prior written notice when an IEP Team refuses to provide documentation of research-based methods, as we believe such requirements are unnecessary and would be overly burdensome." 71 Fed. Reg. 46665 (August 14, 2006).

"States, school districts, and school personnel must, therefore, select and use methods that research has shown to be effective, to the extent that methods based on peer-reviewed research are available. This does not mean that the service with the greatest body of research is the service necessarily required for a child to receive FAPE. Likewise, there is nothing in the Act to suggest that the failure of a public agency to provide services based on peer-reviewed research would automatically result in a denial of FAPE. The final decision about the special education and related services, and supplementary aids and services that are to be provided to a child must be made by the child's IEP Team based on the child's individual needs." 71 Fed. Reg. 46665 (August 14, 2006).

"Special education and related services, and supplementary aids and services based on peer-reviewed research are only required 'to the extent practicable.' If no such research exists, the service may still be provided, if the IEP Team determines that such services are

appropriate. A child with a disability is entitled to the services that are in his or her IEP whether or not they are based on peer-reviewed research. The IEP Team, which includes the child's parent, determines the special education and related services, and supplementary aids and services that are needed by the child to receive FAPE." 71 Fed. Reg. 46665 (August 14, 2006).

"There is nothing in the Act that requires an IEP to include specific instructional methodologies. The Department's longstanding position on including instructional methodologies in a child's IEP is that it is an IEP Team's decision. Therefore, if an IEP Team determines that specific instructional methods are necessary for the child to receive FAPE, the instructional methods may be addressed in the IEP." 71 Fed. Reg. 46665 (August 14, 2006).

"While the Act clearly places an emphasis on practices that are based on scientific research, there is nothing in the Act that requires all programs provided to children with disabilities to be research-based with demonstrated effectiveness in addressing the particular needs of a child where not practicable. We do not believe the recommended change should be made because, ultimately, it is the child's IEP Team that determines the special education and related services that are needed by the child in order for the child to receive FAPE." 71 Fed. Reg. 46665 (August 14, 2006).

The Region 10 Education Service Center's has a [scientifically based research website](#). The scientifically based research included in this website supports proven education methods with actual links to research. This website is frequently updated. Other resources regarding research-based peer reviewed interventions are available at Region 10 Education Service Center's [Response to Intervention Resources](#) website.

Supplementary Aids and Services

"Participation by a student with a disability in an accelerated class or program generally would be considered part of the regular education or the regular classes referenced in the Section 504 and the IDEA regulations. Thus, if a qualified student with a disability requires related aids and services to participate in a regular education class or program, then a school cannot deny that student the needed related aids and services in an accelerated class or program. For example, if a student's IEP or plan under Section 504 provides for Braille materials in order to participate in the regular education program and she enrolls in an accelerated or advanced history class, then she also must receive Braille materials for that class. The same would be true for other needed related aids and services such as extended time on tests or the use of a computer to take notes." [OCR Dear Colleague Letter \(December 26, 2007\)](#).

Special Education

"It is important to note that the IDEA does not require children to be identified with a particular disability category for purposes of the delivery of special education and related services. A child is entitled to FAPE under Part B and not to a particular label. Implicit in the definition of FAPE is the requirement that a child with a disability be provided with special

education and related services in conformity with the child's individualized education program (IEP) in the least restrictive environment, 71 Fed. Reg. 46540, 46553 (August 14, 2006).” [OSEP Letter \(September 11, 2007\)](#).

Related Services

[Provision of Related Services for Students with Disabilities](#)

One of the greatest challenges currently facing Texas in regard to the delivery of services for students with disabilities is the prevalence of inconsistent and inaccurate information. The purpose of the [Related Services Q&A document](#) is to provide information and guidance to parents, district staff, and other interested stakeholders regarding the provision of related services.

Student Success Initiation

Enacted by the 76th Texas Legislature in 1999, the [Student Success Initiative \(SSI\)](#) grade advancement requirements apply to the reading and mathematics tests at grade 5, and the reading and mathematics tests at grade 8. As specified by these requirements, a student may advance to the next grade level only by passing these tests or by unanimous decision of his or her grade placement committee that the student is likely to perform at grade level after additional instruction.

The goal of the SSI is to ensure that all students receive the instruction and support they need to be academically successful in reading and mathematics. This effort depends greatly on schools, parents, and community members working in partnership to meet individual student needs. A number of materials have been developed to help schools implement the SSI grade advancement requirements. These materials are available at the SSI website in a format that facilitates downloading and editing for local use. When modifying these materials, schools should be careful to include all the components required by the grade advancement law and commissioner’s rules.

Initiation, Frequency, Location, Duration

“The meaning of the term ‘duration’ will vary, depending on such things as the needs of the child, the service being provided, the particular format used in an IEP, and how the child’s day and IEP are structured. What is required is that the IEP include information about the amount of services that will be provided to the child, so that the level of the agency’s commitment of resources will be clear to parents and other IEP Team members. The amount of time to be committed to each of the various services to be provided must be appropriate to the specific service, and clearly stated in the IEP in a manner that can be understood by all involved in the development and implementation of the IEP.” 71 Fed. Reg. 46667 (August 14, 2006).

“The Act does not require the IEP to include information about the specific person(s) providing the services.” 71 Fed. Reg. 46667 (August 14, 2006).

"[Y]ou request clarification regarding the continuum of service delivery options to be considered for a student. As you correctly point out, the final regulations do not address service delivery options, but, instead, address the continuum of alternative placements... The examples you provide in your letter (e.g., small-group instruction or direct services) are matters for consideration by the IEP Team, based on a child's individual and unique needs, and cannot be made as a matter of general policy by administrators, teachers or others apart from the IEP Team process." [OSEP Letter to Clarke \(March 8, 2007\)](#).

Does the amount of minutes and hours a specific service is given required to be made a part of each child's IEP? "Although Part B does afford State and local educational authorities some discretion in this area, public agencies must ensure that the amount of services is stated in a manner that is appropriate to the specific service and clear to all who are involved in the development and implementation of the child's IEP. The statement of the amount of service must be sufficiently specific to reflect the commitment of agency resources to the particular service to ensure that the child's IEP addresses the child's identified educational needs. Therefore, it would be inconsistent with Federal requirements for States and school districts to have a practice of using ranges of time to express the agency's level of commitment to a particular special educational or related service since a child's IEP would not contain the specific amount of time committed for that service." [OSEP Letter to Akron \(November 20, 1990\)](#).

"[T]he Department has consistently maintained that a child with a disability should be educated in a school as close to the child's home as possible, unless the services identified in the child's IEP require a different location. Although IDEA does not require that each school building in a local educational agency (LEA) be able to provide all the special education and related services for all types and severities of disabilities, the LEA has an obligation to make available a full continuum of alternative placement options that maximize opportunities for its children with disabilities to be educated with nondisabled peers to the maximum extent appropriate. In light of the above, the Department cannot speculate as to the appropriateness of a particular program, based on the proximity of that program to the child's home. If a child's IEP requires services that are not available at the school closest to the child's home, the child may be placed in another school that can offer the services that are included in the IEP and necessary for the child to receive a free appropriate public education. If the child is placed in a school that is not the school closest to the child's home, transportation, if needed for the child to benefit from special education, must be provided as a related service at no cost to the parent, to the location where the IEP services will be provided." [OSEP Letter to Trigg \(November 30, 2007\)](#).

OPERATING GUIDELINE:

GRADUATION

CATEGORY: ADMISSION, REVIEW AND DISMISSAL (ARD) COMMITTEE
FRAMEWORK: [GRADUATION](#)

PERSONS RESPONSIBLE: School Counselor and Educational Diagnostician

METHODS: When the student enters high school, the ARD committee members review the student's academic history, state assessment history, and post-secondary goals to determine the academic plan best suited for the student. Students are enrolled in courses necessary to complete the recommended or distinguished high school program unless the student, the student's parent or other person standing in parental relation to the student, and a school counselor or school administrator agrees that the student should be permitted to take courses under the minimum high school program.

In addition to completing the course requirements, students entering Grade 9 in 2008-09 and thereafter must demonstrate satisfactory performance on exit-level TAKS or TAKS Accommodated assessments to graduate on distinguished or recommended high school programs. The ARD Committee follows the guidelines provided in the ARD Decision Making Guide to determine the appropriate assessment.

TIMELINES:

Annual ARD: Four Year Plans are developed for all incoming ninth grade students. Plans and assessment data are reviewed and updated at the annual ARD.

Graduation ARD: During Graduation ARD meetings a student's Four Year Plan is reviewed and a Summary of Performance is completed to provide the student with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's post-secondary goals. An FIE must be provided and included as part of the Summary of Performance for students who meet the criteria for graduation due to successful completion of the individual education program (IEP).

GUIDING PRINCIPLES:

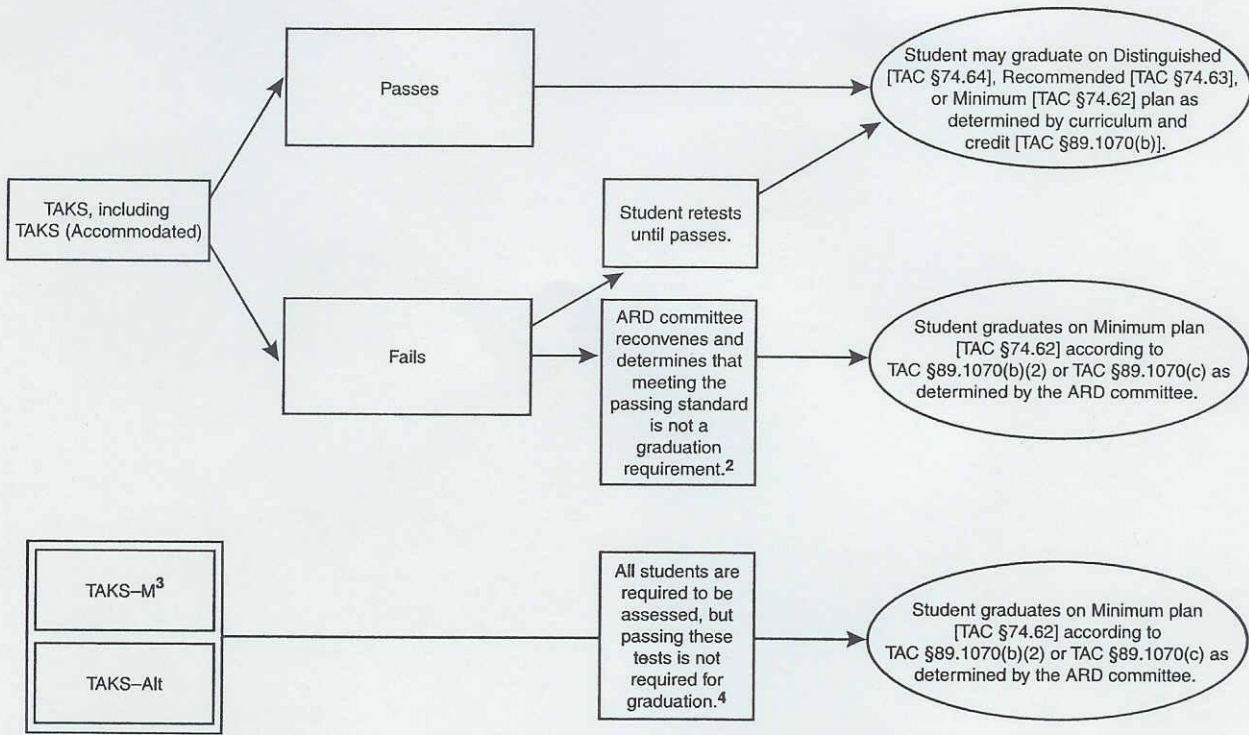
The TEA provides [Graduation Guidance](#) including:

- [Commissioner's Rules Guidance](#); and
- [Senate Bill \(SB 673\) Participation of students with disabilities in graduation ceremonies.](#)

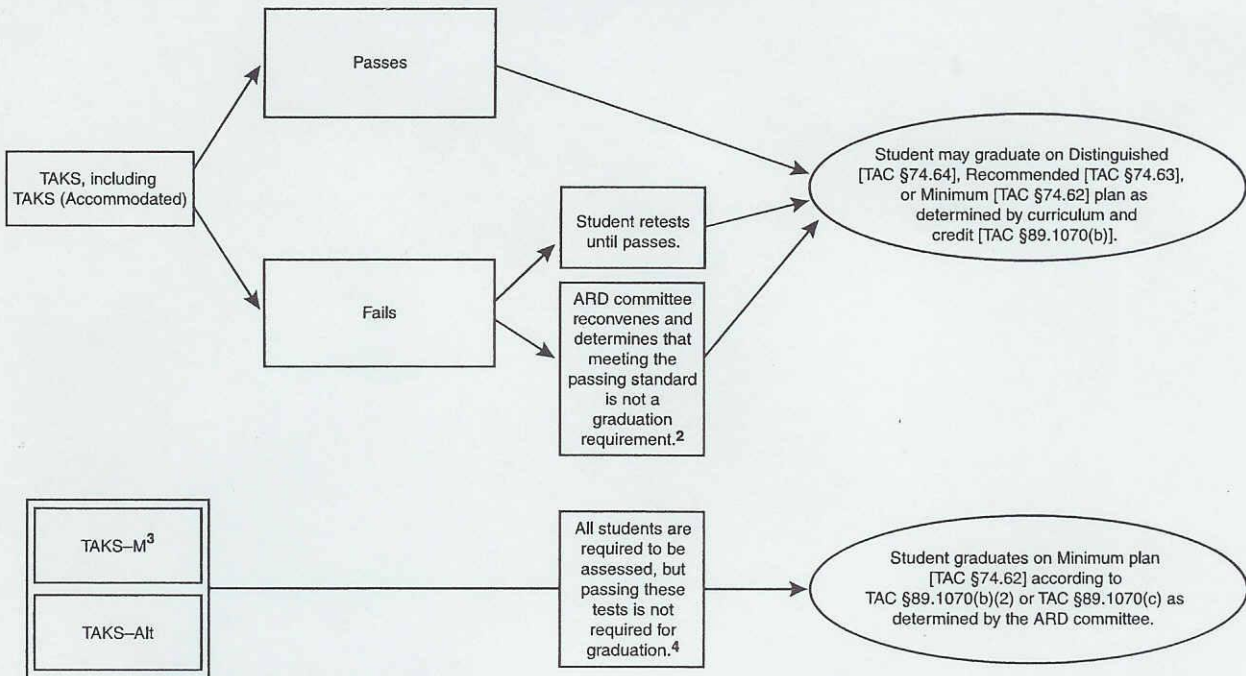
Through the implementation of the district policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the district ensures that graduation of students with disabilities occurs in conformance with the IDEA and its accompanying federal regulations, State statutes and regulations.

SEE FLOW CHART ATTACHED.

Flowchart A
Guidelines for ARD Committees Regarding Testing Requirements
for Students Entering Grade 9 in 2008–2009 (and thereafter)¹



Flowchart B
Guidelines for ARD Committees Regarding Testing Requirements
for Students Entering Grade 10, 11, or 12 in 2008–2009¹



¹ In November 2007, new Commissioner's Rules regarding exit level assessments were established. Students who began completing the Distinguished or Recommended high school program requirements prior to November 2007 are not affected by the rule change.

² Simply failing the test is not sufficient reason to justify changing the IEP to reflect no graduation requirement/no retests.

³ Students who take at least one TAKS-M subject-area test in grade 11 graduate on the Minimum plan.

⁴ Retest opportunities are not available.

OPERATING GUIDELINE: EXTENDED SCHOOL YEAR (ESY) SERVICES

CATEGORY: ADMISSION, REVIEW AND DISMISSAL (ARD) COMMITTEE
FRAMEWORK: [EXTENDED SCHOOL YEAR \(ESY\) SERVICES](#)

Extended School Year services is an individualized instructional program for eligible students with disabilities that is provided beyond the regular school year. The need for ESY services must be determined on an individual basis by the ARD committee.

Some students with disabilities have difficulty retaining skills during long school holidays and or summer. If a student requires a significant amount of time to recoup mastered skills, then the ARD committee should discuss whether the student's needs extended educational and or related services during school breaks. To assist the ARD committee, teachers will complete a Regression Documentation Form indicating that a skill has not been recouped within eight weeks.

The determination of whether a child will receive ESY services will be made by the ARD committee; and the individual education plan (IEP) developed for ESY must include goals and objectives. The ARD committee will determine the length and duration of ESY services needed to maintain critical skills.

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

- (A) placement in a more restrictive instructional arrangement;
- (B) significant loss of acquired skills necessary for the student to appropriately progress in the general curriculum;
- (C) significant loss of self-sufficiency in self-help areas as evidenced by an increase in the number of direct service staff and/or amount of time required to provide special education or related services;
- (D) loss of access to community-based independent living skills instruction or an independent living environment provided by non-educational sources as a result of regression in skills; or
- (E) loss of access to on-the-job training or productive employment as a result of regression in skills.

For students enrolling in the district during the school year (including those who turn three in the summer), 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.

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

OPERATING GUIDELINE: EXTENDED SCHOOL YEAR (ESY) SERVICES

PERSONS RESPONSIBLE: Administrative Assistant and Teacher of Record

TIMELINES: Regression form completed an end of first 8 weeks of the school year.
Regression addressed at annual ARD.

MATERIALS: Regression Documentation Form

METHODS: Teacher of record reviews previous IEP in determining regression

GUIDING PRINCIPLES

“The requirement to provide ESY services to children with disabilities who require such services in order to receive FAPE reflects a longstanding interpretation of the Act by the courts and the Department. The right of an individual child with a disability to receive ESY services is based on that child’s entitlement to FAPE under section 612(a)(1) of the Act. Some children with disabilities may not receive FAPE unless they receive necessary services during times when other children both disabled and nondisabled normally would not be served. We believe it is important to retain the provisions in § 300.106 because it is necessary that public agencies understand their obligation to ensure that children with disabilities who require ESY services in order to receive FAPE have the necessary services available to them, and that individualized determinations about each disabled child’s need for ESY services are made through the IEP process.” 71 Fed. Reg. 46582 (August 14, 2006).

“Typically, ESY services are provided during the summer months. However, there is nothing in §300.106 that would limit a public agency from providing ESY services to a child with a disability during times other than the summer, such as before and after regular school hours or during school vacations, if the IEP Team determines that the child requires ESY services during those time periods in order to receive FAPE. The regulations give the IEP Team the flexibility to determine when ESY services are appropriate, depending on the circumstances of the individual child.” 71 Fed. Reg. 46582 (August 14, 2006).

“Pursuant to the provisions of the [IDEA], the School District is required to provide [each handicapped child] with a ‘free appropriate public education.’ That mandate includes ‘the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child’... The some-educational-benefit standard does not mean that the requirements of the Act are satisfied so long as a handicapped child's progress, absent summer services, is not brought ‘to a virtual standstill.’ Rather, if a child will experience severe or substantial regression during the summer months in the absence of a summer program, the handicapped child may be entitled to year-round services. The issue is whether the benefits accrued to the child during the regular school year will be significantly jeopardized if he is not provided an educational program during the summer months.” [Alamo Heights v. State Board of Education, 790 F.2d 1153 \(5th Cir. 1986\).](#)

“The analysis of whether the child’s level of achievement would be jeopardized by a summer break in his or her structured educational programming should proceed by applying not only

OPERATING GUIDELINE: EXTENDED SCHOOL YEAR (ESY) SERVICES

retrospective data, such as past regression and rate of recoupment, but also should include predictive data, based on the opinion of professionals in consultation with the child's parents as well as circumstantial considerations of the child's individual situation at home and in his or her neighborhood and community." [*Johnson v. Bixby Independent Sch. Dist. No. 4, 921 F.2d 1022, 1028 \(10th Cir. 1990\).*](#)

The TEA has developed an [ESY resource document](#). The purpose of this resource document is to provide information and guidance to parents, district staff, and other interested stakeholders regarding the provision of extended school year (ESY) services.

The ESY resource document includes:

- A Definition of ESY Services
- Legal References Regarding ESY Services (Federal and State)
- Areas of Improvement Identified for ESY Through the OSEP Continuous Improvement Monitoring Process
- State Result Developed Through the Texas Continuous Improvement Process
- Action Needed to Ensure the State Meets the Identified Results

Through the implementation of the district policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the district ensures that extended school year services are provided to students with disabilities when necessary for the provision of a free appropriate public education in conformance with the IDEA and its accompanying federal regulations, State statutes and regulations.

Checklist: Formula for Determining Extended-Year Services

Scale for Assessing Need for Extended-Year Services

Student's Name: _____

Each criterion is based on the following three-point scale:

- 1= Minimal difficulty, need, or anticipated problems
- 2= Moderate difficulty, need, or anticipated problems
- 3= Severe difficulty, need, or anticipated problems

NOTE: If one of the objectives in the student's IEP includes the elimination of dangerous aggression towards self or others, any regression will be considered intolerable and the student will automatically receive a '3' on the regression.

- 1. The severity of the disabling condition _____
- 2. The areas of learning crucial to attaining the goal of self-sufficiency and independence from caretakers _____
- 3. The nature of the student's disability. _____
- 4. The extent of regression caused by interruption in educational programming _____
- 5. The rate of recoument following interruption in educational programming _____
- 6. The availability of the child's parents to provide the educational structure at home _____
- 7. The availability of alternative resources _____
- 8. The ability of the child to interact with nondisabled children _____
- 9. The areas of the student's curriculum which need continuous attention _____
- 10. The student's vocational needs _____
- 11. Whether the requested service is extra ordinary to the student's condition as opposed to an integral part of a program for those with the student's condition _____

*The higher the total score, the greater the student's need for summer services. The total score on this scale ranges from a low of 11 to a high of 33. A score of 22 (50%) or above generally indicates a need for extended-year services.

Brownwood ISD
Special Education Department

Regression and Recoupment Data for Determination of Need for Extended School Year Services

Student: _____ DOB: _____ School: _____

Name/Title of staff member completing data form: _____

| IEP Goal/Objective | Data Sources | A. Mastery Level <small>(as established prior to extended break)</small> Date: _____ | B. Mastery Level 1st Data Collection Date: _____ | C. Mastery Level 2nd Data Collection Date: _____ | D. Mastery Level 3rd Data Collection Date: _____ | Did student recoup the initial mastery level(A) by the time of last check (D) |
|--------------------|---|--|--|--|--|---|
| 1 | <input type="checkbox"/> Work Samples <input type="checkbox"/> Student Demonstration <input type="checkbox"/> Teacher Observations <input type="checkbox"/> FACES <input type="checkbox"/> Assessment | | | | | <input type="checkbox"/> YES <input type="checkbox"/> NO |
| 2 | <input type="checkbox"/> Work Samples <input type="checkbox"/> Student Demonstration <input type="checkbox"/> Teacher Observation <input type="checkbox"/> FACES <input type="checkbox"/> Assessment | | | | | <input type="checkbox"/> YES <input type="checkbox"/> NO |
| 3 | <input type="checkbox"/> Work Samples <input type="checkbox"/> Student Demonstration <input type="checkbox"/> Teacher Observation <input type="checkbox"/> FACES <input type="checkbox"/> Assessment | | | | | <input type="checkbox"/> YES <input type="checkbox"/> NO |
| 4 | <input type="checkbox"/> Work Samples <input type="checkbox"/> Student Demonstration <input type="checkbox"/> Teacher Observation <input type="checkbox"/> FACES <input type="checkbox"/> Assessment | | | | | <input type="checkbox"/> YES <input type="checkbox"/> NO |

Brownwood ISD
Special Education Department

Regression and Recoupment Data for Determination of Need for Extended School Year Services

OPERATING GUIDELINE:

REACHING CLOSURE AND CONSENSUS

CATEGORY: ADMISSION, REVIEW AND DISMISSAL (ARD) COMMITTEE
FRAMEWORK: [REACHING CLOSURE AND CONSENSUS](#)

Through the implementation of the district policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the district ensures that ARD committee meetings will be brought to closure in conformance with the IDEA and its accompanying federal regulations, State statutes and regulations, and whenever possible, consensus will be reached.

PERSONS RESPONSIBLE: Special Education Evaluation Personnel

TIMELINES: If consensus is not reached in the ARD meeting, within 10 calendar days another ARD will be scheduled.

MATERIALS:

METHODS:

GUIDING PRINCIPLES:

To accept the [parents'] view of 'input' would grant parents a veto power over IEP teams' site selection decision. Congress could have included that power in the IDEA; it did **not** do so. The right to provide meaningful input is simply not the right to dictate an outcome and obviously cannot be measured by such." [White v. Ascension Parish School Board, 343 F.3d 373 \(5th Cir. 2003\).](#)

"Absent any evidence of bad faith exclusion of the parents or refusal to listen to or consider the Whites' input, Ascension met IDEA requirements with respect to parental input." [White v. Ascension Parish School Board, 343 F.3d 373 \(5th Cir. 2003\).](#)

The Parent Coordination Network is committed to ensuring that parents of students with disabilities receive accurate and timely information to assist them in making informed choices in their child's education. The following video resources are made available through the Parent Coordination Network:

[Advocating For Your Child - Preventing Conflict in Special Education](#)

Covers the formal and informal indicators of conflict, state and national statistics and trends, and how to know how our own schools or districts are doing in this important area. Specific recommendations for building strong and effective teams are also presented. The material has been developed into Nick Martin's *Guide to Collaboration for IEP Teams* (Brookes Publishing, 2005).

[Strengthening Relationships When Our Children Have Special Needs](#)

Presents an overview of the ten challenges commonly associated with raising a child with a disability. This topic is the subject of Nick's book by the same name, published by Future Horizons in 2004 and also available in Spanish.

OPERATING GUIDELINE:

REACHING CLOSURE AND CONSENSUS

[Feeling Better When We Feel Bad](#)

Provides the skills so very necessary for managing such challenging emotions as fear, grief, anger, and many more. This program presents three specific and proven techniques that can be of great practical value in many aspects of everyday life.

[Ayoyando a su Hijo - La Prevención de Conflictos en Educación Especial](#)

Cubre: los indicadores del conflicto; estadísticas nacionales y estatales; tendencias recientes; y cómo se puede saber de la situación en cuanto a nuestras propias escuelas. También se presentan recomendaciones para desarrollar equipos fuertes mientras se minimiza el conflicto.

[Fortaleciendo Relaciones](#)

Cuando los niños tienen necesidades especiales presenta una visión general de los diez retos para los padres comúnmente asociados a la crianza de los niños especiales. Este tema es el material de un libro de Nick Martin que está disponible en inglés o en español por Future Horizons Publishers.

[Sintiéndonos Mejor Cuando Nos Sentimos Mal](#)

Proporciona las habilidades tan necesarias para manejar emociones tales como miedo, dolor, enojo y muchas más; ofrece tres técnicas específicas y valiosas que pueden ser de gran ayuda en muchísimos aspectos de la vida diaria.

OPERATING GUIDELINE:

AMENDMENT WITHOUT A MEETING

CATEGORY: ADMISSION, REVIEW AND DISMISSAL (ARD) COMMITTEE
FRAMEWORK: [AMENDMENT WITHOUT A MEETING](#)

An Amendment without a meeting is used to make changes to the previous ARD. It can not be used for:

- Initial ARD
- Annual ARD
- Re-evaluation ARD
- Transfer ARD
- Manifestation Determinations
- Any time the instructional arrangement would be changed
- To change STAAR levels, for example STAAR to STAAR Accommodated

Common uses of the Amendment without a meeting include:

- Schedule changes that do not result in a change in instructional arrangement
- Change in state assessment accommodations

PERSONS RESPONSIBLE: Special Education Department Evaluation Personnel

TIMELINES: An amendment becomes effective upon signatures of school staff. Attempts will be made to notify parent prior to amendment.

MATERIALS: District Forms

METHODS: An Amendment requires two signatures: diagnostician or speech therapist, campus administrator.

DISCUSSIONS:

"We do not believe that an amendment to an IEP can take the place of an annual IEP Team meeting." 71 Fed. Reg. 46685 (August 14, 2006).

"Section 300.324(a)(4), consistent with section 614(d)(3)(D) of the Act, permits the public agency and the parent to agree to amend the child's IEP without an IEP Team meeting. If the parent needs further information about the proposed change or believes that a discussion with the IEP Team is necessary before deciding to change the IEP, the parent does not have to agree to the public agency's request to amend the IEP without an IEP Team meeting." 71 Fed. Reg. 46685 (August 14, 2006).

"Section 614(d)(3)(D) of the Act does not require the agreement between the parent and the public agency to be in writing. In addition, the parent is not required to provide *consent*, as defined in §300.9, to amend the IEP without an IEP Team meeting. However, it would be prudent for the public agency to document the terms of the agreement in writing, in the

event that questions arise at a later time. Of course, changes to the child's IEP would have to be in writing." 71 Fed. Reg. 46685 (August 14, 2006).

"We do not believe that it is necessary to regulate on the timeframe within which a public agency must make the IEP accessible to the service providers responsible for implementing the changes, or otherwise notify them of the changes, as this will vary depending on the circumstances (e.g., whether the changes are minor or major changes) and is, therefore, best left to State and local public agency officials to determine." 71 Fed. Reg. 46686 (August 14, 2006).

Through the implementation of the district policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, BISD ensures that any changes to the IEP without a meeting are done in conformance with the IDEA and its accompanying federal regulations, State statutes and regulations.

OPERATING GUIDELINE:

CONSENT FOR INITIAL EVALUATION

CATEGORY: CONSENT
FRAMEWORK: [CONSENT FOR INITIAL EVALUATION](#)

The BISD Notice and Consent for Evaluation form is appropriate for all the areas described on the notice. If evaluation is requested in any area NOT addressed on the notice, a new consent form must be obtained which indicates the parent has been informed about the purpose and type of evaluation to be done.

If the evaluation is for purposes of measuring student progress no consent is required.

The BISD Special Programs Department evaluation personnel will be invited to attend all Tier III SIT meetings. At this meeting, the evaluation personnel will provide the parent copies of the Procedural Safeguards, with receipt, the Guide to the ARD process, with receipt, the Notice of Assessment, and Consent for Evaluation.

PERSONS RESPONSIBLE: Special Education Department Evaluation Personnel

TIMELINES: If consent is not received at the final Tier III SIT meeting, the Special Education evaluation personnel will contact the parent to schedule a meeting to review the assessment and get consent.

MATERIALS: Procedural Safeguards and receipt, Guide to the ARD Process and receipt, Notice of Assessment, Consent for Assessment

METHODS: The Special Education Department evaluation personnel will meet with the parents/guardians to explain the evaluation process in full. The evaluation specialist will explain the Procedural Safeguards and Guide to the ARD Process and secure the parent's signature on each receipt. The Notice of Assessment and Consent for Assessment will be hand delivered.

GUIDING PRINCIPLES:

"The definition of *consent* requires a parent to be fully informed of all information relevant to the activity for which consent is sought. The definition also requires a parent to agree in writing to an activity for which consent is sought. Therefore, whenever consent is used in these regulations, it means that the consent is both informed and in writing." 71 Fed. Reg. 46551 (August 14, 2006).

"As a matter of practice, public agencies begin the process of obtaining parental consent by identifying the parent and contacting the parent by phone or through written correspondence, or speaking to the parent in parent-teacher conferences." 71 Fed. Reg. 46629 (August 14, 2006).

"New § 300.300(a)(2) (proposed § 300.300(a)(2)(ii)) permits the public agency to proceed with the child's initial evaluation without first obtaining the requisite parental consent only in the circumstances detailed in § 300.300(a)(2). Therefore, when one or more of the circumstances in § 300.300(a)(2) are met and a surrogate has not yet been appointed, the public agency need not postpone the child's evaluation to await the appointment of a

OPERATING GUIDELINE:

CONSENT FOR INITIAL EVALUATION

surrogate. This is appropriate because in situations involving requests for initial evaluations, in most cases a surrogate parent has not yet been appointed and delaying an initial evaluation until after a surrogate is appointed and has given consent may not be in the best interests of the child." 71 Fed. Reg. 46631 (August 14, 2006).

"An initial evaluation of a child is the first complete assessment of a child to determine if the child has a disability under the Act, and the nature and extent of special education and related services required. Once a child has been fully evaluated, a decision has been rendered that a child is eligible for services under the Act, and the required services have been determined, any subsequent evaluation of a child would constitute a reevaluation. In the example provided by the commenter, the second evaluation would be considered a reevaluation." 71 Fed. Reg. 46640 (August 14, 2006); see also, [OSEP Letter to Sarzynski \(September 5, 2007\)](#).

"A parent who previously revoked consent for special education and related services may continue to refuse services; however, this does not diminish a State's responsibility under § 300.111 to identify, locate and evaluate a child who is suspected of having a disability and being in need of special education and related services. A public agency must obtain informed written parental consent, consistent with § 300.300(a), before conducting an initial evaluation. A parent who previously revoked consent for the continued provision of special education and related services, like any parent of a child suspected of having a disability, may refuse to provide consent for an initial evaluation." 73 Fed. Reg. 73012 (December 1, 2008).

"Section 300.302, consistent with section 614(a)(1)(E) of the Act, states that the screening of a child by a teacher or specialist to determine appropriate instructional strategies is not considered an evaluation for purposes of determining eligibility for special education and related services. This applies to a child with a disability, as well as a child who has not been identified as a child with a disability. Such screening, therefore, could occur without obtaining informed parental consent for screening." 71 Fed. Reg. 46639 (August 14, 2006).

"We believe the determination of who is considered a 'specialist' should be left to the discretion of the public agency and should not be specified in the regulations. The term, 'instructional strategies for curriculum implementation' is generally used to refer to strategies a teacher may use to more effectively teach children." 71 Fed. Reg. 46639 (August 14, 2006).

"Parental consent is not required for observations conducted as part of routine classroom instruction and monitoring of the child's performance before the child is referred for an evaluation." 71 Fed. Reg. 46659 (August 14, 2006).

"Parental consent is required for observations conducted after the child is suspected of having a disability and is referred for an evaluation." 71 Fed. Reg. 46659 (August 14, 2006).

"To respond to public comments asserting that parental consent should be required for all evaluations, not just those for which new tests were conducted, the Department provided the following clarification of the new statutory provision: 'The statute provides that in some

OPERATING GUIDELINE:

CONSENT FOR INITIAL EVALUATION

instances, an evaluation team may determine that additional data are not needed for an evaluation or reevaluation. In all instances, parents have the opportunity to be part of the team which makes that determination. Therefore, no parental consent is necessary if no additional data are needed to conduct the evaluation or reevaluation. (Assistance to States for the Education of Children with Disabilities and Early Intervention Program for Infants and Toddlers with Disabilities, Final Rule, 64 Fed. Reg. 12564, 12610 (Mar. 12, 1999))." [OSEP Letter to Copenhagen \(October 19, 2008\)](#).

"If the IEP Team and other qualified professionals determine, based on review of existing data, that those data are sufficient to determine whether the child is a child with a disability and the child's educational needs, and that no additional data are needed, the determination of whether the child qualifies as a child with a disability, within the meaning of 34 CFR §300.8, could be made without conducting further assessments of the child. In that situation, the public agency would not be required to obtain parental consent for an initial evaluation. 34 CFR §300.300(d)(1)(i)." [OSEP Letter to Copenhagen \(October 19, 2008\)](#).

"If the public agency informs the parent that no additional data are needed to determine whether the child is a child with a disability and the child's educational needs, but the parent requests that additional assessment be conducted, the public agency would be required to obtain parental consent prior to conducting that assessment." [OSEP Letter to Copenhagen \(October 19, 2008\)](#).

"We believe it is important to emphasize that a public agency must make reasonable efforts to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability. This includes the parent of a child who is a ward of the State." 71 Fed. Reg. 46631 (August 14, 2006).

"We also agree with the commenters that a public agency should document and make the same reasonable efforts to obtain consent for an initial evaluation from a parent, including a parent of a child who is a ward of the State, that are required when a public agency attempts to arrange a mutually convenient time and place for an IEP Team meeting (e.g., detailed records of telephone calls, any correspondence sent to the parents, visits made to the parent's home or place of employment), and will add a new paragraph (d)(5) to make this clear. We recognize that the statute uses both 'reasonable measures' and 'reasonable efforts' when referring to a public agency's responsibility to obtain parental consent for an evaluation, initial services, and a reevaluation. We believe these two phrases, when used in this context, have the same meaning and, therefore, have used 'reasonable efforts' throughout the regulations related to parental consent for consistency." 71 Fed. Reg. 46631 (August 14, 2006).

"The methods by which a public agency seeks to obtain parental consent for an initial evaluation (beyond the requirement that the public agency use the parent's native language or mode of communication) and how a public agency documents its efforts to obtain the parent's written consent are appropriately left to the discretion of SEAs and LEAs." 71 Fed. Reg. 46632 (August 14, 2006).

"Consistent with the Department's position that public agencies should use their consent override procedures only in rare circumstances, § 300.300(a)(3) clarifies that a public

OPERATING GUIDELINE:

CONSENT FOR INITIAL EVALUATION

agency is not required to pursue an initial evaluation of a child suspected of having a disability if the parent does not provide consent for the initial evaluation. State and local educational agency authorities are in the best position to determine whether, in a particular case, an initial evaluation should be pursued.” 71 Fed. Reg. 46632 (August 14, 2006).

Through the implementation of the BISD policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the BISD ensures that prior to conducting an initial evaluation reasonable efforts will be made to obtain informed written consent for the initial evaluation in conformance with the IDEA and its accompanying federal regulations, State statutes and regulations. Moreover, the BISD will conduct an initial evaluation only after it has obtained consent for the initial evaluation, except as otherwise permitted by law in the case of a child who is a ward of the State and does not yet have a surrogate parent.

OPERATING GUIDELINE:

CONSENT FOR SERVICES

CATEGORY: CONSENT
FRAMEWORK: [CONSENT FOR SERVICES](#)

There are certain activities under the IDEA that cannot take place unless the school obtains parental consent. BISD needs parental consent to provide special education services to a child for the first time. When a parent gives consent, it means that they understand and agree in writing for the school to carry out the activity for which consent is sought. If a parent does not respond to a request to provide consent for services for the first time, refuses to give consent, or gives consent and then revokes consent in writing, the school will not be in violation of the requirement to provide a free appropriate education (FAPE) and is not required to convene an admission, review and dismissal (ARD) meeting or develop an individualized education program (IEP) for a child.

PERSONS RESPONSIBLE: Special Education Department Evaluation Personnel

TIMELINES: BISD will secure written parental consent for initial placement before proposed special education services are provided.

MATERIALS: Procedural Safeguards and Receipt of Procedural Safeguards, Consent for Initial Placement

METHODS: BISD will contact parent and secure written parental consent before initial placement for special education services.

GUIDING PRINCIPLE:

"The definition of *consent* requires a parent to be fully informed of all information relevant to the activity for which consent is sought. The definition also requires a parent to agree in writing to an activity for which consent is sought. Therefore, whenever consent is used in these regulations, it means that the consent is both informed and in writing." 71 Fed. Reg. 46551 (August 14, 2006).

"As a matter of practice, public agencies begin the process of obtaining parental consent by identifying the parent and contacting the parent by phone or through written correspondence, or speaking to the parent in parent-teacher conferences." 71 Fed. Reg. 46629 (August 14, 2006).

"If a surrogate parent already has been appointed because the public agency, after reasonable efforts, could not locate a parent, the public agency would not have to again attempt to contact other individuals meeting the definition of parent in § 300.30 to seek consent." 71 Fed. Reg. 46631 (August 14, 2006).

"We believe it is appropriate to use the phrase, 'initial provision of services' in § 300.300(a)(1)(ii), rather than the statutory phrase 'consent for placement for receipt of special education and related services,' in section 614(a)(1)(D)(i) of the Act to clarify that consent does not need to be sought every time a particular service is provided to the child.

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CONSENT FOR SERVICES

CATEGORY: CONSENT
FRAMEWORK: [CONSENT FOR SERVICES](#)

In addition, the distinction between consent for an initial evaluation and consent for initial services is more clearly conveyed in § 300.300(a)(1)(ii) than in the statutory language, and is consistent with the Department’s longstanding position that ‘placement’ refers to the provision of special education services, rather than a specific place, such as a specific classroom or specific school.” 71 Fed. Reg. 46640 (August 14, 2006).

“We believe § 300.300(b) is clear that the ‘initial provision of services’ means the first time a parent is offered special education and related services after the child has been evaluated in accordance with the procedures in §§ 300.301 through 300.311, and has been determined to be a child with a disability, as defined in § 300.8.” 71 Fed. Reg. 46633 (August 14, 2006).

“New 300.300(b)(4)(ii)...follows the specific language in section 614(a)(1)(D)(ii)(III)(bb) of the Act and reflects the new provision in the Act that relieves public agencies of any potential liability for failure to convene an IEP Team meeting or develop an IEP for a child whose parents have refused consent or failed to respond to a request for consent to the initial provision of special education and related services. It does not, however, prevent a public agency from convening an IEP Team meeting and developing an IEP for a child as a means of informing the parent about the services that would be provided with the parent’s consent.” 71 Fed. Reg. 46634 (August 14, 2006).

“We believe that a public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child and will make this clear in § 300.300(b). We noted in our discussion regarding the reasonable efforts that a public agency must make to obtain parental consent for an initial evaluation to determine whether the child is a child with a disability, that we added a new paragraph (d)(5) to § 300.300 that provides that to meet the reasonable efforts requirement, a public agency must document its attempts to obtain consent using the procedures in § 300.322(d). We believe a public agency should make these same reasonable efforts to obtain parental consent for initial services, and will include this in new § 300.300(d)(5).” 71 Fed. Reg. 46633 (August 14, 2006).

“We do not believe it is necessary or appropriate to require a public agency to maintain additional documentation, beyond that required in new § 300.300(d)(5), of a parent’s refusal to provide consent for initial services or to prescribe where this documentation must be obtained or maintained. Public agencies understand the importance of properly documenting a parent’s refusal to consent to the initial provision of special education and related services and are in the best position to determine any additional documentation that is necessary and where to obtain and maintain such documentation.” 71 Fed. Reg. 46633-46634 (August 14, 2006).

“We understand the commenters’ concern that a parent of a child with a disability who refuses to consent to the provision of special education and related services may not fully understand the extent of the special education and related services their child would receive without the development of an IEP for their child. However, we do not view the consent provisions of the Act as creating the right of parents to consent to each specific special

OPERATING GUIDELINE:

CONSENT FOR SERVICES

CATEGORY: CONSENT

FRAMEWORK: [CONSENT FOR SERVICES](#)

education and related service that their child receives. Instead, we believe that parents have the right to consent to the initial provision of special education and related services. 'Fully informed,' in this context, means that a parent has been given an explanation of what special education and related services are and the types of services that might be found to be needed for their child, rather than the exact program of services that would be included in an IEP." 71 Fed. Reg. 46634 (August 14, 2006).

"A child whose parent has refused consent for initial services would not be provided special education and related services and would continue to receive general education services." 71 Fed. Reg. 46633 (August 14, 2006).

"Section 300.300(b)(4) allows a parent at any time after the initial provision of special education and related services to revoke consent for the continued provision of special education and related services to their child in their entirety. Under § 300.300(b)(1), parental consent is for the initial provision of special education and related services generally, not for a particular service or services. Once a public agency receives a parental revocation of consent, in writing, for all special education and related services for a child and provides prior written notice in accordance with § 300.503, the public agency must, within a reasonable time, discontinue all special education and related services to the child. In this circumstance, the public agency may not use the procedures in subpart E of these regulations, including the mediation procedures under § 300.506 or the due process procedures under §§ 300.507 through 300.516, to obtain agreement or a ruling that the services may be provided to the child." 73 Fed. Reg. 73011 (December 1, 2008).

"It is inappropriate for school personnel to encourage a parent to revoke consent for special education and related services." 73 Fed. Reg. 73014 (December 1, 2008).

"Once a parent revokes consent for a child to receive special education and related services, the child is considered a general education student and will be considered a general education student under the ESEA...the child will not have an IEP; therefore, the State will no longer be required under the IDEA to provide accommodations that were previously included in the child's IEP." 73 Fed. Reg. 73011 (December 1, 2008).

"Once a parent revokes consent in writing under § 300.300(b)(4) for the continued provision of special education and related services, a teacher is not required to provide the previously identified IEP accommodations in the general education environment. However, general education teachers often provide classroom accommodations for children who do not have IEPs. Nothing in § 300.300(b)(4) would prevent a general education teacher from providing a child whose parent has revoked consent for the continued provision of special education and related services with accommodations that are available to non-disabled children under relevant State standards." 73 Fed. Reg. 73012 (December 1, 2008).

Through the implementation of the district's policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the district ensures that prior to the initial provision of services, reasonable efforts will be made to obtain informed written consent for the initial provision of services in conformance with the IDEA and its

SSA: **Brownwood ISD**
County District No.: **025-902**

OPERATING GUIDELINE:

CONSENT FOR SERVICES

CATEGORY: CONSENT

FRAMEWORK: [CONSENT FOR SERVICES](#)

accompanying federal regulations, State statutes and regulations. Moreover, the district will initiate services only after it has obtained consent for the initial provision of services.

OPERATING GUIDELINE:

CONSENT FOR REEVALUATION

CATEGORY: CONSENT
FRAMEWORK: [CONSENT FOR REEVALUATION](#)

The BISD Notice and Consent for Evaluation form is appropriate for all the areas described on the notice. If evaluation is requested in any area NOT addressed on the notice, a new consent form must be obtained which indicates the parent has been informed about the purpose and type of evaluation to be done.

If the evaluation is for purposes of measuring student progress no consent is required.

If an ARD committee or a parent requests a complete reevaluation at any time, formal notice should be given and Consent for Individual Evaluation should be obtained regardless of the date on the previous consent.

PERSONS RESPONSIBLE: Special Education Department Evaluation Personnel

TIMELINES: The Special Education Office will review existing evaluation data using the Assessment Planning Document and get consent for new assessment at the annual ARD committee meeting immediately prior to the date by which the reevaluation is due.

MATERIALS: Assessment Planning Document, Procedural Safeguards and receipt, Notice of Assessment, Consent for Assessment

METHODS: The Special Education Department evaluation personnel will contact the parents/guardians to review the evaluation process. The evaluation specialist will review the Procedural Safeguards and secure the parent's signature on the receipt.

GUIDING PRINCIPLES:

"The definition of *consent* requires a parent to be fully informed of all information relevant to the activity for which consent is sought. The definition also requires a parent to agree in writing to an activity for which consent is sought. Therefore, whenever consent is used in these regulations, it means that the consent is both informed and in writing." 71 Fed. Reg. 46551 (August 14, 2006).

"As a matter of practice, public agencies begin the process of obtaining parental consent by identifying the parent and contacting the parent by phone or through written correspondence, or speaking to the parent in parent-teacher conferences." 71 Fed. Reg. 46629 (August 14, 2006).

"If a surrogate parent already has been appointed because the public agency, after reasonable efforts, could not locate a parent, the public agency would not have to again attempt to contact other individuals meeting the definition of parent in § 300.30 to seek consent." 71 Fed. Reg. 46631 (August 14, 2006).

"Evaluations of student progress occur as a regular part of instruction for all students in all schools. If such evaluations are designed to assess whether the child has mastered the information in, for example, chapter 10 of the social studies text, and are the same or similar to such evaluations for all children studying chapter 10 of the social studies text,

OPERATING GUIDELINE:

CONSENT FOR REEVALUATION

parental consent would not be required for such an evaluation. If, however, the evaluation is specific to an individual child and is, as you indicated in your letter, '...crucial to determining a child's continuing eligibility for services or changes in those services,' OSEP believes such evaluations fall under the provisions of 34 CFR §300.15 and require parental consent under the provisions of 34 CFR §300.300(a) and (c)." [OSEP Letter to Sarzynski \(September 5, 2007\)](#).

"Not every evaluation to determine the extent of a student's progress is considered an 'evaluation' under 34 CFR §300.15, requiring written parental consent....However, an evaluation to determine whether 'services should be increased or decrease' is generally considered an 'evaluation' under 34 CFR §300.15; and therefore, written parental consent is required." [OSEP Letter to Sarzynski \(May 6, 2008\)](#).

"Section 300.302, consistent with section 614(a)(1)(E) of the Act, states that the screening of a child by a teacher or specialist to determine appropriate instructional strategies is not considered an evaluation for purposes of determining eligibility for special education and related services. This applies to a child with a disability, as well as a child who has not been identified as a child with a disability. Such screening, therefore, could occur without obtaining informed parental consent for screening." 71 Fed. Reg. 46639 (August 14, 2006).

"We believe the determination of who is considered a 'specialist' should be left to the discretion of the public agency and should not be specified in the regulations. The term, 'instructional strategies for curriculum implementation' is generally used to refer to strategies a teacher may use to more effectively teach children." 71 Fed. Reg. 46639 (August 14, 2006).

"If an FBA is used to evaluate an individual child in accordance with 34 CFR §§300.304 through 300.311 to assist in determining whether the child is a child with a disability and the nature and extent of special education and related services that the child needs, it is considered an evaluation under Part B and the regulation at 34 CFR §300.15. Parental consent, consistent with 34 CFR §300.300(a) and (b), is required for an FBA conducted as an individual evaluation or reevaluation. If the FBA is conducted for individual evaluative purposes to develop or modify a behavioral intervention plan for a particular child, under 34 CFR §300.502, a parent who disagrees with the child's FBA would have the right to request an IEE at public expense. These regulatory provisions are consistent with the policy clarification provided in the Scheinz letter." [OSEP Letter to Christiansen \(February 9, 2007\)](#).

"Typically, ongoing assessment of a child's progress with respect to behavioral goals and the effectiveness of behavioral interventions is provided through progress monitoring, including documented observations, and through interviews with staff members involved with the child on a daily basis. It would be atypical, we believe, for progress to be assessed through conducted a complete functional behavioral assessment. However, as noted in the February 9, 2007 letter to Dr. Kris Christiansen, if the public agency believes it is necessary to conduct a functional behavioral assessment for the purpose of determining whether the positive behavioral interventions and supports set out in the current IEP for a particular child with a disability would be effective in enabling the child to make progress toward the child's IEP goals/objectives, or to determine whether the behavioral components of the child's IEP would need to be revised, we believe the functional behavioral assessment would

OPERATING GUIDELINE:

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be considered a reevaluation under Part B for which parental consent would be required under 34 CFR §300.300(c)." [OSEP Letter to Sarzynski \(May 6, 2008\)](#).

"Under 34 CFR §300.324(a)(2)(i), if a child's behavior impedes his or her learning or that of others, the IEP Team must 'consider the use of positive behavioral interventions and supports, and other strategies to address that behavior.' If an FBA is being conducted for the purpose of determining whether the positive behavioral interventions and supports set out in the current IEP for a particular child with a disability would be effective in enabling the child to make progress toward the child's IEP goals/objectives, or to determine whether the behavioral component of the child's IEP would need to be revised, we believe that the FBA would be considered a reevaluation under Part B for which parental consent would be required under 34 CFR §300.300(c)." [OSEP Letter to Christiansen \(February 9, 2007\)](#).

"We noted in our discussions regarding the reasonable efforts that a public agency must make to obtain parental consent for an initial evaluation and the initial provision of services, that we added a new paragraph (d)(5) to § 300.300 that provides that to meet the reasonable efforts requirement, a public agency must document its attempts to obtain consent using the procedures in § 300.322(d). These are the same procedures in current § 300.505(c)(2). Therefore, we will include a reference to § 300.300(c)(2)(i) in new § 300.300(d)(5)." 71 Fed. Reg. 46635 (August 14, 2006).

"Section 300.300(c)(2), consistent with section 614(c)(3) of the Act, is clear that a public agency may conduct a reevaluation of a child with a disability, if the public agency can demonstrate that it has made reasonable efforts to obtain such consent and the child's parent has failed to respond to a request for consent." 71 Fed. Reg. 46635 (August 14, 2006).

"Section 300.300(a)(3) allows a public agency to override parental refusal to consent to an initial evaluation by utilizing the mediation procedures under § 300.506 or the due process procedures under §§ 300.507 through 300.516.... However, we believe it is important to state this more directly and will, therefore, add language to § 300.300(c)(1) to clarify that if a parent refuses to consent to a reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the procedural safeguards in subpart E of this part." 71 Fed. Reg. 46634 (August 14, 2006).

Through the implementation of the BISD policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the BISD ensures that prior to conducting a reevaluation, reasonable efforts will be made to obtain informed written consent for the reevaluation in conformance with the IDEA and its accompanying federal regulations, State statutes and regulations. Moreover, the BISD will conduct a reevaluation only after it has obtained consent for the reevaluation, except when, despite reasonable efforts, the parent has failed to respond.

OPERATING GUIDELINE: CONSENT TO EXCUSE MEMBER FROM ATTENDING ARD COMMITTEE MEETING

CATEGORY: CONSENT
FRAMEWORK: [CONSENT TO EXCUSE MEMBER FROM ATTENDING ARD COMMITTEE MEETING](#)

Prior to the ARD committee meeting, the member for which excusal is being requested must submit a written report detailing student progress to aide in the development of the IEP. This documentation should be provided to the ARD Case Manager before the ARD committee meeting. The ARD Case Manager will then contact the parent to discuss the requested excusal.

The "Consent to Excuse ARD Committee Member" document will be completed and signed by parent at the ARD committee meeting. If the parent does not consent to the excusal, the ARD committee meeting shall be rescheduled for a date and time that all required members can be present.

PERSONS RESPONSIBLE: Special Education Department Evaluation Personnel

MATERIALS: Consent to Excuse ARD Committee Member

GUIDING PRINCIPLES:

"The definition of *consent* requires a parent to be fully informed of all information relevant to the activity for which consent is sought. The definition also requires a parent to agree in writing to an activity for which consent is sought. Therefore, whenever consent is used in these regulations, it means that the consent is both informed and in writing." 71 Fed. Reg. 46551 (August 14, 2006).

"The meaning of the terms 'agree' or 'agreement' is not the same as consent. 'Agree' or 'agreement' refers to an understanding between the parent and the public agency about a particular question or issue, which may be in writing, depending on the context." 71 Fed. Reg. 46551 (August 14, 2006).

"When an IEP Team member's area is being modified or discussed, § 300.321(e)(2), consistent with section 614(d)(1)(C)(ii) of the Act, requires the LEA and the parent to provide written informed consent. Consistent with § 300.9, consent means that the parent has been fully informed in his or her native language, or other mode of communication, and understands that the granting of consent is voluntary and may be revoked at any time. The LEA must, therefore, provide the parent with appropriate and sufficient information to ensure that the parent fully understands that the parent is consenting to excuse an IEP Team member from attending an IEP Team meeting in which the member's area of the curriculum or related services is being changed or discussed and that if the parent does not consent the IEP Team meeting must be held with that IEP Team member in attendance." 71 Fed. Reg. 46674 (August 14, 2006).

"Whether a parent must provide consent to excuse a member of the IEP Team from attending an IEP Team meeting depends on whether the member's area of the curriculum

**OPERATING GUIDELINE: CONSENT TO EXCUSE MEMBER FROM ATTENDING
ARD COMMITTEE MEETING**

or related services is being modified or discussed at the IEP Team meeting. We cannot eliminate the different procedures for different types of excusals because section 614(d)(1)(C) of the Act clearly differentiates between circumstances in which parental consent is required and when an agreement is required to excuse an IEP member from attending an IEP Team meeting." 71 Fed. Reg. 46673 (August 14, 2006).

"If the member's area is not being modified or discussed, § 300.321(e)(1), consistent with section 614(d)(1)(C) of the Act, provides that the member may be excused from the meeting if the parent and LEA agree in writing that the member's attendance is not necessary. An agreement is not the same as consent, but instead refers to an understanding between the parent and the LEA. Section 614(d)(1)(C) of the Act specifically requires that the agreement between a parent and an LEA to excuse a member's attendance at an IEP Team meeting must be in writing. If, however, the member's area is being modified or discussed, § 300.321(e)(2), consistent with section 614(d)(1)(C)(ii) of the Act, requires the LEA and the parent to provide written informed consent." 71 Fed. Reg. 46673 (August 14, 2006).

"We do not believe it is necessary to require consent or a written agreement between the parent and the public agency to excuse individuals who are invited to attend IEP Team meetings at the discretion of the parent or the public agency because such individuals are not required members of an IEP Team." 71 Fed. Reg. 46675 (August 14, 2006).

"Section 300.321(a)(3) requires the IEP Team to include not less than one special education teacher or where appropriate, not less than one special education provider of the child. As explained earlier, a special education provider is a person who is, or will be, responsible for implementing the IEP. Therefore, if a speech pathologist, occupational therapist, or other special education provider, other than the child's special education teacher is on the IEP Team, written consent from the parent would be required for the speech pathologist, occupational therapist, or other special education provider to be excused from attending an IEP Team meeting, in whole or in part, when the IEP Team meeting involves a modification to, or discussion of, the IEP Team member's related service or area of the curriculum." 71 Fed. Reg. 46675 (August 14, 2006).

"The Act does not specify how far in advance of an IEP Team meeting a parent must be notified of an agency's request to excuse a member from attending an IEP Team meeting or when the parent and LEA must sign a written agreement or provide consent to excuse an IEP Team member. Ideally, public agencies would provide parents with as much notice as possible to request that an IEP Team member be excused from attending an IEP Team meeting, and have agreements or consents signed at a reasonable time prior to the IEP Team meeting. However, this might not always be possible, for example, when a member has an emergency or an unavoidable scheduling conflict. To require public agencies to request an excusal or obtain a signed agreement or consent to excuse a member a specific number of days prior to an IEP Team meeting would effectively prevent IEP Team members from being excused from IEP Team meetings in many situations and, thus, be counter to the intent of providing additional flexibility to parents in scheduling IEP Team meetings. Furthermore, if an LEA requests an excusal at the last minute or a parent needs additional

**OPERATING GUIDELINE: CONSENT TO EXCUSE MEMBER FROM ATTENDING
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time or information to consider the request, the parent always has the right not to agree or consent to the excusal of the IEP Team member. We, therefore, decline to regulate on these matters." 71 Fed. Reg. 46676 (August 14, 2006).

"An LEA may not routinely or unilaterally excuse IEP Team members from attending IEP Team meetings as parent agreement or consent is required in each instance." 71 Fed. Reg. 46674 (August 14, 2006).

Through the implementation of the BISD policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the BISD ensures that prior to excusing a required member of the ARD committee from attending the meeting in whole or in part, informed written consent for the excusal will be obtained in conformance with the IDEA and its accompanying federal regulations, State statutes and regulations.

OPERATING GUIDELINE:

CONSENT TO ACCESS PUBLIC BENEFITS

CATEGORY: CONSENT
FRAMEWORK: [CONSENT TO ACCESS PUBLIC BENEFITS](#)

Through the implementation of the district's policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the district ensures that prior to accessing a child's public insurance benefits such as Medicaid, informed written consent will be obtained in conformance with the IDEA and its accompanying federal regulations, State statutes and regulations.

PERSONS RESPONSIBLE: Special Education Department Evaluation Personnel, Special Education Administrative Assistant responsible for SHARS billing

TIMELINES: Annual ARD and at every ARD when the frequency or duration of a related service changes

MATERIALS: ARD Documents and "SHARS Information for Parent or Guardian" letter

METHODS:

- Speech eligibility and/or need for a related service or personal care attendant is determined by the ARD committee
- The ARD committee documents frequency and duration of service on the schedule of services page and completes the Personal Care Supplement form if needed
- If the parent attends the ARD, consent is documented on the ARD Signature Page
- If the parent is not in attendance, the "SHARS Information for Parent or Guardian" letter is mailed to the parent for signature.
- No SHARS services are billed without parent consent.

GUIDING PRINCIPLE:

"The definition of *consent* requires a parent to be fully informed of all information relevant to the activity for which consent is sought. The definition also requires a parent to agree in writing to an activity for which consent is sought. Therefore, whenever consent is used in these regulations, it means that the consent is both informed and in writing." 71 Fed. Reg. 46551 (August 14, 2006).

"As a matter of practice, public agencies begin the process of obtaining parental consent by identifying the parent and contacting the parent by phone or through written correspondence, or speaking to the parent in parent-teacher conferences." 71 Fed. Reg. 46629 (August 14, 2006).

"If a surrogate parent already has been appointed because the public agency, after reasonable efforts, could not locate a parent, the public agency would not have to again attempt to contact other individuals meeting the definition of parent in § 300.30 to seek consent." 71 Fed. Reg. 46631 (August 14, 2006).

"We disagree with the comment that LEAs and other public agencies responsible for providing special education and related services to children with disabilities should not be allowed to use public benefits or insurance to pay for these services. Pursuant to section 612(a)(12) of the Act, if a child is covered by a public benefits or insurance program and there is no cost to the family or the child in using the benefits of that program to support a service included in a child's IEP, the public agency is encouraged to use the public benefits or insurance to the extent possible. We believe public benefits or insurance are important resources for LEAs and other public agencies to access, when appropriate, to assist in meeting their obligation to make FAPE available to all children who are eligible to receive services." 71 Fed. Reg. 46608 (August 14, 2006).

"In order for a public agency to use the Medicaid or other public benefits or insurance program in which a child participates to provide or pay for services required under the Act, the public agency must provide the benefits or insurance program with information from the child's education records (e.g., services provided, length of the services). Information from a child's education records is protected under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232(g) (FERPA), and section 617(c) of the Act. Under FERPA and section 617(c) of the Act, a child's education records cannot be released to a State Medicaid agency without parental consent, except for a few specified exceptions that do not include the release of education records for insurance billing purposes." 71 Fed. Reg. 46608 (August 14, 2006).

"We believe obtaining parental consent each time the public agency seeks to use a parent's *public* insurance or other public benefits to provide or pay for a service is important to protect the privacy rights of the parent and to ensure that the parent is fully informed of a public agency's access to his or her public benefits or insurance and the services paid by the public benefits or insurance program. Therefore, we will revise § 300.154(d)(2)(iv) to clarify that parental consent is required each time the public agency seeks to use the parent's *public* insurance or other public benefits. We do not believe that it would be appropriate to include a provision permitting waiver of parental consent in this circumstance, even where a public agency makes reasonable efforts to obtain the required parental consent. However, we agree with the commenter that a public agency could satisfy parental consent requirements under FERPA and section 617(c) of the Act if the parent provided the required parental consent to the State Medicaid agency, and the consent satisfied the Part B definition of *consent* in § 300.9." 71 Fed. Reg. 46608 (August 14, 2006).

[OSEP Memorandum 07-10 to State Directors of Special Education \(May 3, 2007\):](#)

The Office of Special Education Programs (OSEP) has received many requests for clarification regarding interpretation of the requirement at 34 CFR §300.154(d)(2)(iv)(A) of the final Part B regulations implementing the Individuals with Disabilities Education Act of 2004 (IDEA). This regulation requires that, with regard to services required to provide a free appropriate public education (FAPE) under Part B, the public agency must obtain parental consent, consistent with 34 CFR §300.9, each time that access to public benefits or insurance is sought.

In this context, "parental consent" means –

- The parent has been fully informed of all information relevant to the activity for which the consent is sought, in his or her native language or other mode of communication;
- The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records that will be released and to whom;
- The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; and
- If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent is given and before it is revoked).

OSEP believes that permitting a public agency to obtain parental consent for a specified amount of services for a specified period of time would be sufficient to enable parents to make an informed decision as to whether to provide consent for a public agency to access their or their child's public benefits or other public insurance.

This consent may be obtained one time for the specific services, and duration of services identified in a child's individualized education program (IEP), and a local educational agency (LEA) would not be required to obtain a separate consent each time a Medicaid agency or other public insurer or public program is billed for the provision of required services. For example, if it is known that a child is to receive three hours per week of occupational therapy (OT) for 36 weeks, parents could be asked to give consent to the public agency's billing of the parent's public benefits or insurance for 108 hours of service for the 36-week period. (The amount billed would depend on the amount of OT service that was actually provided.) While this type of consent may be obtained at an IEP meeting, it could also be obtained at some point after the IEP is developed.

However, if the public agency seeks to use the child's or parents' public benefits or public insurance to pay for additional hours of service (due to the IEP being revised or extended) or the public agency is charging different amounts for such services, and would like to access the child's or parents' benefits or insurance for those costs, the public agency must obtain parental consent, covering the additional amount of service or costs to be charged to the child's or parents' public benefits or public insurance. The Part B provisions in 34 CFR §300.154(d)(2) are intended to ensure that the parent is fully informed of a public agency's proposed access of the child's or parents' benefits under a public benefits or public insurance program and provide written parental consent prior to the public agency's access to those public benefits or public insurance.

If parental consent is given directly to another agency, such as the State Medicaid agency, the LEA does not have to independently obtain a separate

LEA: **Brownwood ISD**
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CONSENT TO ACCESS PUBLIC BENEFITS

parental consent, as long as the parental consent provided to the other agency meets the requirements of 34 CFR §§300.9 and 300.154(d). The public agency seeking parental consent to access public benefits or public insurance programs is also obligated, under 34 CFR §300.154(d)(2)(iv), to notify the parent that the parent's refusal to allow access to their public benefits or public insurance does not relieve the public agency of its responsibility to ensure that all required FAPE services are provided at no cost to the parent. If another agency obtains the parental consent required by 34 CFR §§300.9 and 300.154(d)(2), the LEA must maintain a copy of the parental consent to both demonstrate its compliance under Part B of the IDEA and to ensure that it is available for the parent or child to review.

See also, [*OSEP Letter to Hill \(March 8, 2007\)*](#); [*OSEP Letter to Guess \(February 9, 2007\)*](#); [*OSEP Letter to Smith \(January 23, 2007\)*](#); [*OSEP Letter to Kinney \(May 7, 2008\)*](#).

OPERATING GUIDELINE: CONSENT TO ACCESS PRIVATE INSURANCE

CATEGORY: CONSENT
FRAMEWORK: [CONSENT TO ACCESS PRIVATE INSURANCE](#)

The District may access the parents' private insurance proceeds to pay for services required to provide a FAPE to a child with a disability with informed consent from the parent. Staff must inform the parents that their refusal to permit the LEA to access their private insurance does not relieve the LEA of its responsibility to ensure that all required services are provided at no cost to the parents.

Through the implementation of the district's policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the district ensures that prior to accessing a child's private insurance benefits, informed written consent will be obtained in conformance with the IDEA and its accompanying federal regulations, State statutes and regulations.

PERSONS RESPONSIBLE: Special Education Department Evaluation Personnel, Special Education Director

TIMELINES: when appropriate

MATERIALS: Procedural Safeguards and receipt, Guide to the ARD Process and receipt, Notice of Assessment, Consent to Access Public Benefits

METHODS: The Special Education personnel will meet with the parents/guardians to explain the request to access private insurance. The evaluation specialist will explain the Procedural Safeguards and Guide to the ARD Process and secure the parent's signature on each receipt. The Consent to Access Private Insurance will be hand delivered. The parent will be asked to return the consent form after careful consideration of the request.

GUIDING PRINCIPLES:

"The definition of *consent* requires a parent to be fully informed of all information relevant to the activity for which consent is sought. The definition also requires a parent to agree in writing to an activity for which consent is sought. Therefore, whenever consent is used in these regulations, it means that the consent is both informed and in writing." 71 Fed. Reg. 46551 (August 14, 2006).

"As a matter of practice, public agencies begin the process of obtaining parental consent by identifying the parent and contacting the parent by phone or through written correspondence, or speaking to the parent in parent-teacher conferences." 71 Fed. Reg. 46629 (August 14, 2006).

"If a surrogate parent already has been appointed because the public agency, after reasonable efforts, could not locate a parent, the public agency would not have to again attempt to contact other individuals meeting the definition of parent in § 300.30 to seek consent." 71 Fed. Reg. 46631 (August 14, 2006).

OPERATING GUIDELINE: CONSENT FOR DISCLOSURE OF CONFIDENTIAL INFORMATION

CATEGORY: CONSENT
FRAMEWORK: [CONSENT FOR DISCLOSURE OF CONFIDENTIAL INFORMATION](#)

There are certain activities under the IDEA that cannot take place unless the school obtains parental consent. BISD must fully inform parents of all the information needed to be able to make a good decision including a description of the proposed activity. The information must be in the parent’s native language or other mode of communication. If there are records to be released, BISD must list the records and to whom they will be released.

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

PERSONS RESPONSIBLE: Special Education Department Evaluation Personnel

TIMELINES: BISD will secure written parental consent before disclosure of any confidential information.

MATERIALS: Procedural Safeguards and Receipt of Procedural Safeguards, Notice for Release/Consent to Request Confidential Information or Transfer Assistive Technology (AT) Device

METHODS: BISD will contact parent and secure written parental consent before disclosure of any confidential information.

GUIDING PRINCIPLE:

“The definition of *consent* requires a parent to be fully informed of all information relevant to the activity for which consent is sought. The definition also requires a parent to agree in writing to an activity for which consent is sought. Therefore, whenever consent is used in these regulations, it means that the consent is both informed and in writing.” 71 Fed. Reg. 46551 (August 14, 2006).

“As a matter of practice, public agencies begin the process of obtaining parental consent by identifying the parent and contacting the parent by phone or through written correspondence, or speaking to the parent in parent-teacher conferences.” 71 Fed. Reg. 46629 (August 14, 2006).

“If a surrogate parent already has been appointed because the public agency, after reasonable efforts, could not locate a parent, the public agency would not have to again attempt to contact other individuals meeting the definition of parent in § 300.30 to seek consent.” 71 Fed. Reg. 46631 (August 14, 2006).

OPERATING GUIDELINE: CONSENT FOR DISCLOSURE OF CONFIDENTIAL INFORMATION

"Under FERPA and § 300.622(a), schools, generally, must have written permission from the parent (or child who has reached the age of majority) in order to release information from a child's education records. However, there are exceptions to this general rule under FERPA that also apply to the records of children with disabilities and permit the release of information from education records without parental consent. Under 34 CFR 99.31(a), schools can disclose education records without consent under the circumstances specified in §99.31" 71 Fed. Reg. 46736 (August 14, 2006).

Outside Agency Participation in an IEP Team Meeting

"Section 300.321(a)(6), consistent with section 614(d)(1)(B)(vi) of the Act, already allows other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate, to be included as members of a child's IEP Team at the discretion of the parent or the agency. Therefore, we decline to make the changes recommended by the commenters. However, it should be noted that if a public agency wishes to invite officials from another agency, such as officials of the child welfare agency that are not representing the child, the public agency must obtain parental consent for the individual to participate in the IEP Team meeting because confidential information about the child from the child's education records would be shared at the meeting." 71 Fed. Reg. 46669 (August 14, 2006).

"[A] separate consent must be obtained from the parents or a child who has reached the age of majority for each IEP Team meeting, conducted in accordance with 34 CFR §300.320(b), before a public agency can invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services to attend the meeting." [OSEP Letter to Gray \(March 17, 2008\)](#).

"This consent requirement was included in the August 2006 final Part B regulations to protect the confidentiality discussions that occur at IEP Team meetings that other agency representatives would be able to hear, as a result of their attendance at such meetings, 'only because they may be providing or paying for transition services.' In order to protect this confidential information about a child from unauthorized disclosure to these other agency representatives, the consent of the parent or a child who has reached the age of majority must be obtained before a public agency can invite representatives of other participating agencies to attend IEP Team meetings.... Since the conversations at each IEP Team meeting are not the same, and since confidential information about the child is always discussed, we believe that consent must be obtained prior to each IEP Team meeting if a public agency proposes to invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services. Therefore, it is not permissible under this regulation for a public agency to obtain the consent of the parents or eligible child only one time before the transition planning process is initiated for the child until the child leaves school. Although your question also asks about obtaining the requisite consent on an annual basis, one annual consent would not be sufficient if there is more than one IEP Team meeting conducted during a 12-month period where a purpose of the meeting will be the consideration of the child's postsecondary goals and the transition services

OPERATING GUIDELINE: CONSENT FOR DISCLOSURE OF CONFIDENTIAL INFORMATION

needed to assist the child in reaching those goals under 34 CFR §300.320(b).” [OSEP Letter to Gray \(March 17, 2008\)](#); see also, 71 Fed. Reg. 46672 (August 14, 2006).

“Is consent required only for IEP meetings or for any time that an agency representative meets with students, e.g. when a VR [vocational rehabilitation] counselor presents orientation and eligibility information to a group of students? ... Whether parental consent or the consent of the child who has reached the age of majority is required ... would depend on whether personally identifiable information is being released to officials of vocational rehabilitation agencies.” [OSEP Letter to Gray \(March 17, 2008\)](#).

Transmitting Records of a Parentally-Placed Private School Child

“The Act is silent on the obligation of officials of the LEA where private elementary schools and secondary schools are located to share personally identifiable information, such as individual evaluation information, with officials of the LEA of the parent’s residence. We believe that the LEA where the private schools are located has an obligation to protect the privacy of children placed in private schools by their parents. We believe that when a parentally-placed private school child is evaluated and identified as a child with a disability by the LEA in which the private school is located, parental consent should be required before such personally identifiable information is released to officials of the LEA of the parent’s residence. Therefore, we are adding a new paragraph (b)(3) to § 300.622 to make this clear.” 71 Fed. Reg. 46592 (August 14, 2006).

Transmitting Records to Law Enforcement

“We maintain that the provisions in section 615(k)(6)(B) of the Act, as reflected in § 300.535(b)(2), must be read consistent with the disclosures permitted under FERPA for the education records of all children. Under FERPA, personally identifiable information (such as the child’s status as a special education child) can only be released with parental consent, except in certain very limited circumstances. Therefore, the transmission of a child’s special education and disciplinary records under paragraph (b)(2) of this section without parental consent is permissible only to the extent that such transmission is permitted under FERPA.” 71 Fed. Reg. 46728 (August 14, 2006).

Through the implementation of the district’s policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, BISD ensures that prior to disclosing confidential information, informed written consent for such disclosure will be obtained in conformance with the IDEA and FERPA, and their accompanying federal regulations, State statutes and regulations, unless otherwise provided by law.

OPERATING GUIDELINE: CONSENT TO TRANSFER ASSISTIVE TECHNOLOGY DEVICES

CATEGORY: CONSENT
FRAMEWORK: [CONSENT TO TRANSFER ASSISTIVE TECHNOLOGY DEVICES](#)

"The definition of *consent* requires a parent to be fully informed of all information relevant to the activity for which consent is sought. The definition also requires a parent to agree in writing to an activity for which consent is sought. Therefore, whenever consent is used in these regulations, it means that the consent is both informed and in writing." 71 Fed. Reg. 46551 (August 14, 2006).

"As a matter of practice, public agencies begin the process of obtaining parental consent by identifying the parent and contacting the parent by phone or through written correspondence, or speaking to the parent in parent-teacher conferences." 71 Fed. Reg. 46629 (August 14, 2006).

"If a surrogate parent already has been appointed because the public agency, after reasonable efforts, could not locate a parent, the public agency would not have to again attempt to contact other individuals meeting the definition of parent in § 300.30 to seek consent." 71 Fed. Reg. 46631 (August 14, 2006).

"In instances where Part B funds have been used to purchase an assistive technology device for a student with a disability to carry out the student's IEP, school districts can collaborate with state vocational rehabilitation agencies to make arrangements for a student to continue to use that device as he or she transitions to, and participates in, a state vocational rehabilitation services program which is funded under Title I of the Rehabilitation Act. The use, management and disposition of assistive technology devices that meet the definition of equipment is found in the Education Department General Administrative Regulations (EDGAR), which also contain guidelines for the use of this equipment. Essentially, the regulations provide that a local educational agency must continue to use equipment purchased with Part B funds as long as it needs the equipment to carry out its Part B program. Since transition planning and services are considered essential to Part B, students can continue to use their assistive technology devices as they transition into a program of VR services. The local educational agency can transfer ownership of the equipment to the state VR agency if the LEA determines that it no longer needs that device in connection with its Part B program or for any other federally-supported project it conducts. For example, it is unlikely that LEAs would need specially customized or otherwise modified equipment which is specifically designed for a child and a transfer would be permitted under this scenario. In the event of transfer of ownership, however, the district may have a further obligation to the SEA depending upon the value of the device. The EDGAR requirements governing the disposition of equipment provide that if the current fair market value of the device is less than \$5000, there is no further financial obligation on the part of the VR agency; if the device is valued in excess of \$5,000, the district's awarding agency (the state educational agency) has a right to an amount proportionate to its share in the cost of the equipment. The applicable documentation or accounting requirements which must be followed in equipment transfers are detailed in the EDGAR regulations, and such transfers must also comply with state and local procedures. The above commentary addresses

OPERATING GUIDELINE: CONSENT TO TRANSFER ASSISTIVE TECHNOLOGY DEVICES

transfers of equipment between school districts and VR agencies; in a footnote, OSEP pointed out that questions regarding the continued use and transfer of equipment purchased with Part B funds by a state agency providing services directly to a child with a disability would be governed by state rules." *OSEP Letter to Goodman* (June 21, 1998); see also, 34 C.F.R. §80.32 EDGAR regulation governing equipment.

Through the implementation of the Brownwood ISD policies and procedures as outlined in the Legal Framework for the Child-Centered Special Education Process, the Brownwood ISD ensures that prior to transferring an assistive technology device; informed written consent for such transfer will be obtained in conformance with the IDEA and its accompanying federal regulations, State statutes and regulations. The Brownwood ISD utilizes the TEA's [Uniform Transfer Agreement](#) for the transfer of assistive technology devices.

"[Insert narrative: persons responsible, timelines, materials, and methods or use fields below]"

PERSONS RESPONSIBLE: "[Insert required information]"

TIMELINES: "[Insert required information]"

MATERIALS: "[Insert required information]"

METHODS: "[Insert required information]"

Brownwood ISD
Special Education Department
Homebound Service Report

| Day | Date | Time | Subject | Activity | Status * | Parent Signature |
|------------------|------|------|---------|----------|----------|------------------|
| Monday | | | | | | |
| Tuesday | | | | | | |
| Wednesday | | | | | | |
| Thursday | | | | | | |
| Friday | | | | | | |
| Saturday | | | | | | |
| Sunday | | | | | | |

For the week of _____

Total hours for week _____

Teacher's Signature _____

Attach time sheet

* C - completed work
 S - sent to teacher
 G - graded/credit received